2022

Deal Points Report: Venture Capital Financings

By Michael Grantmyre and Ryan Unruch

OSLER

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The *2022 Deal Points Report: Venture Capital Financings* provides general information only and does not constitute legal or other professional advice. Specific advice should be sought in connection with your circumstances. For more information, please contact Osler's Emerging and High Growth Companies Group at emergingcompanies@osler.com.

Introduction

Welcome to Osler, Hoskin & Harcourt LLP's second annual comprehensive report on venture capital and growth equity financing transactions in the emerging and high growth companies ecosystem.

In 2022, headlines and market sentiment painted a tumultuous picture of the technology and venture markets amidst the backdrop of rising interest rates, leading to increases in the cost of capital, shrinking consumer spending and reduced business investment growth. Notwithstanding this, in 2022, Osler represented clients in the emerging and high-growth companies space in 301 preferred share equity financing transactions with an aggregate deal value of approximately US$4.01 billion, representing impressive signs of growth, renewal and resilience in the ecosystem. At the same time, Osler continued to expand the national footprint for its Emerging and High Growth Companies Group, including in the province of Québec and the Prairie provinces of Canada. Many others shared our optimism about the performance and potential of the ecosystem in 2022, including the Canadian Venture Capital and Private Equity Association (CVCA), which noted that "[i]n 2022, the Canadian venture capital market saw the second-highest record in both deal count and deal value, despite market uncertainties" and pointed to the renewal in the ecosystem, evidenced by the sustained activity of venture investors and the number of early-stage financings that occurred during the course of 2022.

With the backdrop and context noted above, the *Deal Points Report: Venture Capital Financings* synthesizes data from 353 venture capital and growth equity preferred share financings completed by Osler from 2020 to 2022, representing more than US$6.13 billion in total transaction value. It is important to note that these 353 financings represent, as a random sample, only a portion of Osler's

significant overall financing deal volume; during 2020 to 2022, Osler represented clients in the emerging and high growth companies space in 837 preferred share equity financing transactions with an aggregate deal value of approximately US$11.98 billion. Over the same period, Osler also acted on hundreds of financing transactions involving the issuance of convertible securities (such as Simple Agreements for Future Equity (SAFEs) or convertible promissory notes) which transactions were not included in our *Deal Points Report*. This significant level of transaction volume, combined with Osler's position as the preeminent Canadian legal advisor to clients in the emerging and high growth companies space, are key factors in our unique ability to produce a report like the *Deal Points Report*. In the Refinitiv's *Global Private Equity Legal Review; Full Year 2022*, for example, Osler was ranked seventh globally amongst legal advisors to venture backed companies based on number of rounds and tenth globally amongst legal advisors to venture backed companies based on round value, and was the highest ranking Canadian legal advisor included in the global top ten for these rankings.

The *Deal Points Report* is unique within the Canadian market as it does not rely only on publicly available information or third party submitted data, but draws on Osler's confidential anonymized data sources, with a focus on delivering its readers deeper access to comprehensive financing-related information that goes beyond information that can be gathered solely from publicly available data sources. Osler has undertaken publishing the *Deal Points Report* as we believe this data should be available to all stakeholders within the emerging and high growth companies ecosystem. To accomplish this, the *Deal Points Report* includes comprehensive financing-related data extracted from non-public sources such as term sheets, subscription agreements, shareholders agreements and secondary sale transaction documents. And because all data presented in the *Deal Points Report* is from financings completed by Osler across the country, its authors are able to interpret and contextualize raw data inputs, with the benefit of first-hand exposure to these financings, in a way that enhances the production of meaningful insights and reliable conclusions.

The total investment value of all deals covered by the *Deal Points Report* is US$6.13 billion.

The *Deal Points Report* also provides the opportunity to profile some of Osler's clients and to share their unique and inspiring stories, including how these clients, in the midst of challenging market conditions, were able to succeed in raising a financing round and continue to thrive. We are truly grateful for the support and trust of these clients, and all of Osler's clients. At Osler, we are fortunate to represent entrepreneurs and emerging and growth stage companies that cover a broad spectrum of knowledge-based industries, supporting them through the phases of their lifecycle and providing legal advice on a wide range of issues and requirements along the way (read our emerging and high growth clients' success stories.) We are proud to be a part of their journey, which in turn is part of a much bigger story – the growth and exceptional success of a resilient emerging and high growth companies ecosystem across Canada, an ecosystem that continues to create jobs, innovation and economic growth across the country, and attracts significant amounts of domestic and international investment. Importantly, one of the focuses for this year's *Deal Points Report* is understanding the implications of overall changes in financial markets for the emerging and high growth companies ecosystem itself. We are excited to explore the data relating to this with readers of this year's *Deal Points Report*.

Finally, there are many data points that we feel are relevant to the market and important to track, but which did not make it into this year's publication. We will continue to refresh the content and data points that are tracked in future releases of the *Deal Points Report*. In the meantime, please do not hesitate to reach out to any of the lawyers in our Emerging and High Growth Companies Group in our offices across Canada to discuss the findings in this year's *Deal Points Report*. We also welcome requests to present additional data points that may be of interest in future versions of the *Deal Points Report*. To submit a request, please contact us at emergingcompanies@osler.com.

Highlights from the *Deal Points Report*

- Notwithstanding market uncertainties in 2022, the number of down rounds were below the three-year average (2020 - 2022) covered by the *Deal Points Report*. In 2022, 7% of all financing rounds qualified as down rounds while less than 2% of all rounds qualified as flat rounds. While this result is surprising in light of the macroeconomic pressures on technology and venture markets, we believe that the reliance on bridge financing strategies by companies in 2022, discussed further below, directly correlates to the lack of down round financings that we observed in 2022.
- There was a pronounced increase in the use of convertible instruments in financings in 2022, particularly where companies sought to extend their cash runway, while continuing to grow in order to obtain a more desirable valuation at a subsequent equity financing. In fact, our data shows that there were 30% more bridge financing rounds completed in 2022, as compared to 2021.
- Of those companies that completed a down round during the three-year period covered by the *Deal Points Report*, the highest incidence of down rounds occurred in later stage financings (i.e., Series C, Series D and beyond). This aligns with our expectations: companies completing later stage financings are more susceptible to market pressures that affect their financial and customer metrics, which in turn influences investor demand and valuations. This data is also consistent with U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends* which showed that U.S. emerging companies experienced a sharp increase in the number of down rounds for later stage financings (Series D and beyond).

Osler's emerging and high growth clients share their success stories

For more than a decade, Osler has served as counsel to some of Canada's most innovative and leading startup founders and growth-stage investors like Waabi, Fable, Mercator AI and Qui Identity.

- Data from 2020 through 2022 reflects the continued standardization of key financing terms, being *pari passu* 1x liquidation preferences, no participation rights, broad-based weighted average anti-dilution, no redemption rights and non-cumulative dividends. This continued alignment of Canadian financing terms with U.S. financing terms can be attributed to the high levels of U.S. investment in Canadian financings and companies and investors increasingly adopting these terms as part of a "best practices" approach to financings. In 2022, despite changing market conditions, the aforementioned financing terms continued to reflect standard market practice, without any material shift or trend towards more 'investor friendly' terms.
- The highest concentration of financings in Canada occurred at the early stages (i.e. Series Seed and Series A), which is consistent with findings from other Canadian reports, such as those prepared by the CVCA, including the Canadian Venture Capital Market Overview – 2022 Year in Review.
- Companies in the information technology industry (including artificial intelligence, blockchain, adtech, edtech and cybersecurity) made up over 40% of all companies raising a financing round covered by the *Deal Points Report*, with consumer-/retail-based companies having the second highest concentration of financings, representing 19% of the financings covered.
- Over the three-year period covered by the *Deal Points Report*, the largest increase in the number of financings by industry was in fintech (5.89% increase) and information technology (4.65% increase).
- Ontario and British Columbia have the highest concentration of companies raising a financing round that were included in the *Deal Points Report* – representing, respectively, 56% and 19% of all Canadian companies included. High levels of venture activity in Ontario and British Columbia during 2022 in particular are also reflected in the recent Canadian Venture Capital Market Overview – 2022 Year in Review released by the CVCA. Additionally, the CVCA reported that Québec-based companies received 25% of all venture capital proceeds invested in Canada in 2022. Given this exciting growth, and as a result of the recent high-profile additions to Osler's Montréal-based Emerging and High Growth Companies practice, we expect to see additional increases in Québec-based financings in the 2023 data for the next release of the *Deal Points Report*.
- There was a steady increase in the number of companies founded by women – from 13.3% in 2020 to 16.4% in 2022. Overall representation of women-founded companies stood at approximately 15% of all financings covered by the *Deal Points Report*. Additionally, there was a higher concentration of women-founded companies raising Series A (19%) and Series B (21%) financing rounds in 2022, a significant increase from 2021 where only 10% of women-founded companies raised a Series A round and 11% raised a Series B round.
- The total investment amount in U.S. dollars (including for any initial closing and follow-on investment for that same transaction) broken down by series, for financings completed in 2021 and 2022, shows a material decrease in the aggregate investment amount invested in companies at all stages of financing, but particularly in companies raising later stage financings. These results are generally in-line with the Canadian Venture Capital Market Overview – 2022 Year in Review released by the CVCA.

There was a steady increase in the number of companies founded by women – from 13.3% in 2020 to 16.4% in 2022. Overall representation of women-founded companies stood at approximately 15% of all financings covered by the *Deal Points Report*.

- The overall timing to close a financing, measured from the date a term sheet is executed until the initial closing date of the financing, increased at all stages of financings in 2022 amidst heightened uncertainty in the market.
- Where a financing had multiple closings in 2022, 31.1% of the funds invested in the round were funded after the initial closing, up from 25.5% in 2021, as companies often took longer to establish their investor syndicates, and investors required additional time to obtain internal approvals to make investments amidst changing market conditions.
- Over 95% of financings covered by the *Deal Points Report* used documentation generally based on the CVCA model financing agreements.
- Data relating to preferred director, common director and independent director board representation shows a trend towards a greater proportion of preferred director representation in later stages of financings. The data reflects a larger proportion of non-preferred directors in Series Seed and Series A financings, typically representing greater consolidation of founder and common shareholder control in these companies.

Methodology and background

- The *Deal Points Report* consists of a review of 353 preferred share financings, from Series Seed financings through to Series D financings and beyond, completed by Osler between 2020 and 2022. These preferred share financings include a small representation (approximately 8%) of transactions which involve a U.S. company in instances where a Canadian office of Osler was engaged in the transaction. Common share financing transactions and transactions resulting in the issuance of convertible securities (such as Simple Agreements for Future Equity (SAFEs) or convertible promissory notes) were excluded.
- The total value of all initial investment across all of these financings was US$5.7 billion. The total value of initial investment, plus follow-on investment, across all these financings was US$6.13 billion.
- Osler was company counsel in approximately two-thirds of the financing transactions included in the *Deal Points Report* and investor counsel in approximately one-third of these financings.

Robust ecosystem driving early-stage Canadian companies

Chad Bayne, founder and Co-Chair of Osler's Emerging and High Growth Companies Group, outlines the key findings and trends from the *Deal Points Report*.

- Osler collected and anonymized data from both public (where documents such as company articles are publicly filed) and non-public financing documents related to these transactions, including term sheets, articles, subscription agreements, shareholders agreements and secondary sale transaction documents.
- As noted above, financings covered in the *Deal Points Report* span a three year period. Rather than focusing on only one year (i.e. 2022), we believe that including historical data provides the reader with long term directional insight into the developments in venture financing trends. Additionally, we believe that covering data from a three year period yields a broader data set, that in turn yields more accurate and informative insights for the reader. As such, while 2021 and 2020 data covered in the *Deal Points Report* was present in the last iteration of the report, we believe that this two year historical data serves a critical role in the context of this report.
- The *Deal Points Report* is divided into four sections, with a view to coherently organizing the findings: General Overview, Valuation and Investment Intelligence, Financing Structure Intelligence and Financing Terms Intelligence.
- The *Deal Points Report* does not attempt to filter out data which does not squarely fit within the construct of a "typical preferred share financing transaction." We believe that an unfiltered and unbiased perspective of deal terms and trends should be presented to the reader. In instances where one or more transactions significantly skew the data in the *Deal Points Report*, we have indicated as much for the reader's benefit.
- It is widely understood that financial markets and many industries, including in the emerging and high growth companies space, were in a state of change in 2022, particularly relative to their performance during 2021. Despite this, we observed that many financing terms, which were viewed as typical in 2020 and 2021, continued to be typical in 2022. We believe that this outcome is the result of two factors. First, many companies that might have faced the prospect of completing a down round with less friendly terms may have deferred completing an equity financing altogether, or alternatively, decided to raise a bridge round (or round extension) on the same terms and valuation as the prior round or issue convertible instruments (such as SAFEs or convertible notes) to avoid potentially punitive valuations or financing terms. Second, companies that were able to command strong valuations, relative to their prior valuation, and favourable financing terms in the context of equity financings, moved forward with those transactions, despite overarching market changes in 2022. We believe that it is important to draw the reader's attention to the foregoing to provide context for many of the charts that follow. We will be interested to see whether the 2023 data for the next version of the *Deal Points Report* shows any changes to the use of typical financing terms as some companies may be forced to raise equity rounds of financing, regardless of the terms that are offered by investors.
- Given macro shifts in the market between 2021 and 2022, we believe that it is critical, in certain instances, to further break down data for the reader between 2021 and 2022. Accordingly, certain data in this year's *Deal Points Report* now includes additional charts comparing our 2021 data to our 2022 data.

- This year's release of the *Deal Points Report* includes new charts, displaying data points on terms and trends that were not covered in last year's version. The addition of these new charts is consistent with our ongoing commitment to ensure that the *Deal Points Report* continues to evolve and expand in ways that are meaningful and valuable to the reader.
- All dollar amounts reported on in the *Deal Points Report* for financing transactions that were not actually denominated in USD were converted into USD based on the applicable foreign exchange rate published by the Bank of Canada as of closing date of the applicable financing. To the extent that the closing date of such a financing transaction occurred on a holiday, the applicable dollar amount was converted into USD based on the applicable foreign exchange rate published by the Bank of Canada on the next business day.

About Osler's Emerging High Growth Companies Group

The Emerging and High Growth Companies Group at Osler is composed of individuals who are passionate about entrepreneurship and fostering the development of early and growth stage ventures. Osler is the only Canadian law firm ranked Band 1 in Chambers Canada, and our team members located in offices across the country, including Toronto, Vancouver, Montréal, Ottawa and Calgary, are eager to share their experience and insight with emerging companies to help maximize their development and ensure long-term success.

We represent entrepreneurs and emerging and growth stage companies nationwide from a broad spectrum of knowledge-based industries, supporting them from incubation through their growth trajectory, as well as the venture capital funds, growth equity funds and private equity funds that finance them. We provide legal advice on the wide range of issues and legal requirements that emerging and high growth ventures face, from corporate and tax structuring, to fundraising and shareholder agreements, to intellectual property strategies and employment- and compensation-related matters – all of which require a deep understanding of the market and expert counsel.

Osler acts for more than 1,500 early, growth and late-stage ventures and venture investors across Canada, the United States and around the world. In the last four years, we have acted on more than 1,000 angel, venture and private equity financings. In 2022, despite the effects of market changes and pressures, Osler advised on 301 preferred share financing transactions with more than US$4.01 billion raised by emerging and high growth companies, many of which are showcased in the data forming the basis for this *Deal Points Report*. Over the same period, Osler also acted on hundreds of financing transactions involving the issuance of convertible securities (such as Simple Agreements for Future Equity (SAFEs) or convertible promissory notes) which transactions were not included in our *Deal Points Report*.

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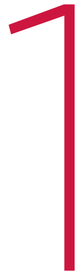
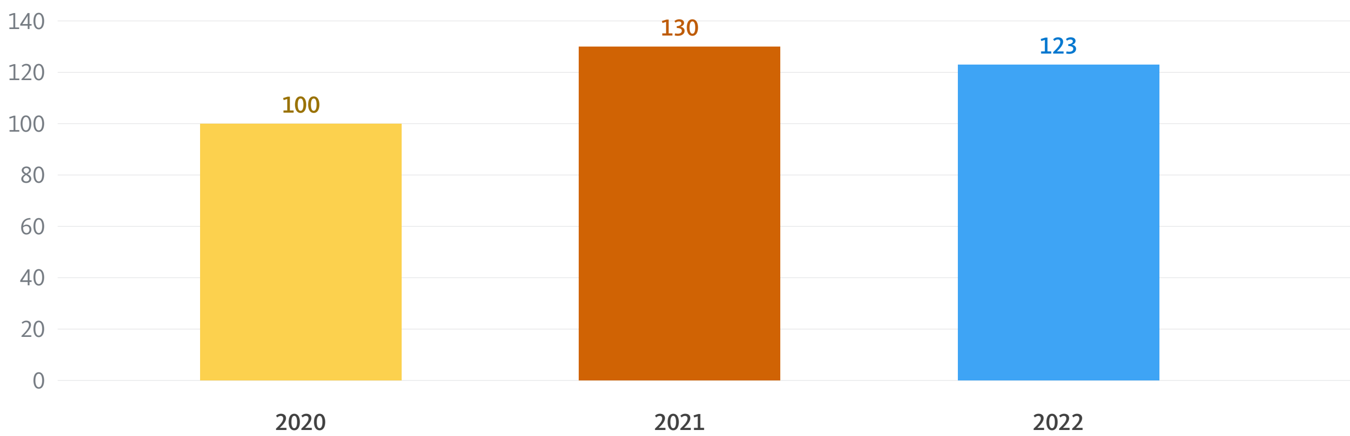


General overview

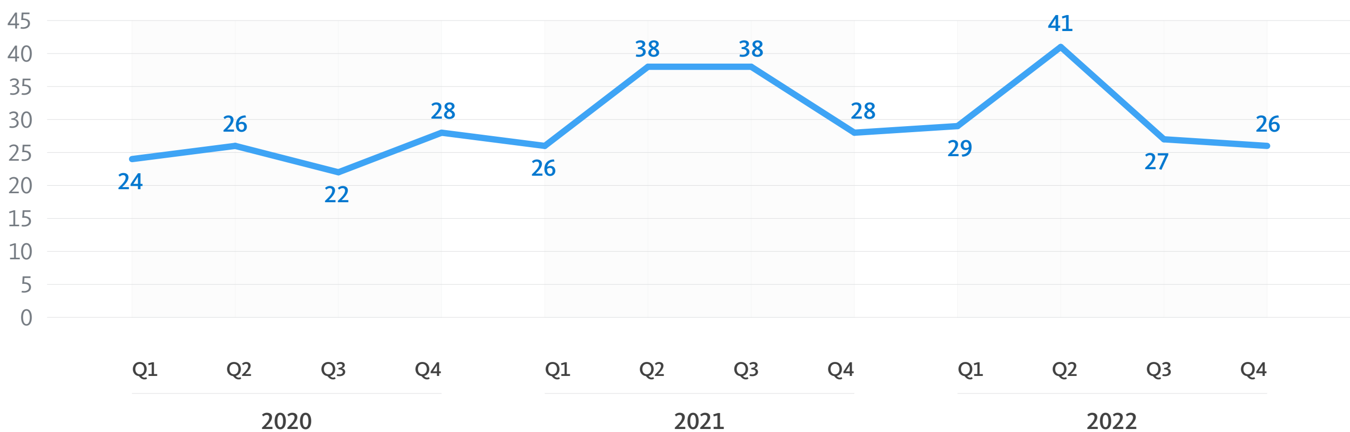
Total financings

These are the number of financings included in the *Deal Points Report*.



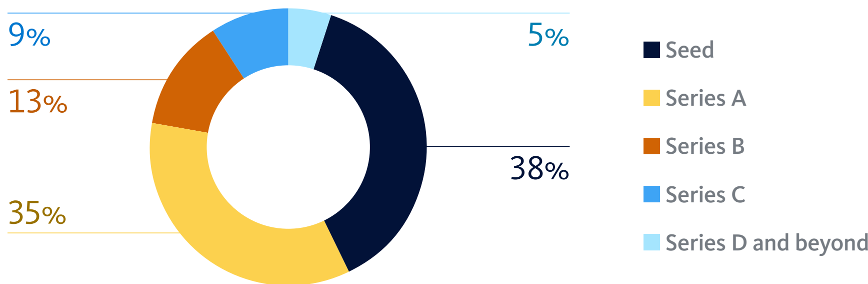
Total financings, by quarter

This graph shows the number of financings included in the *Deal Points Report*, by quarter.



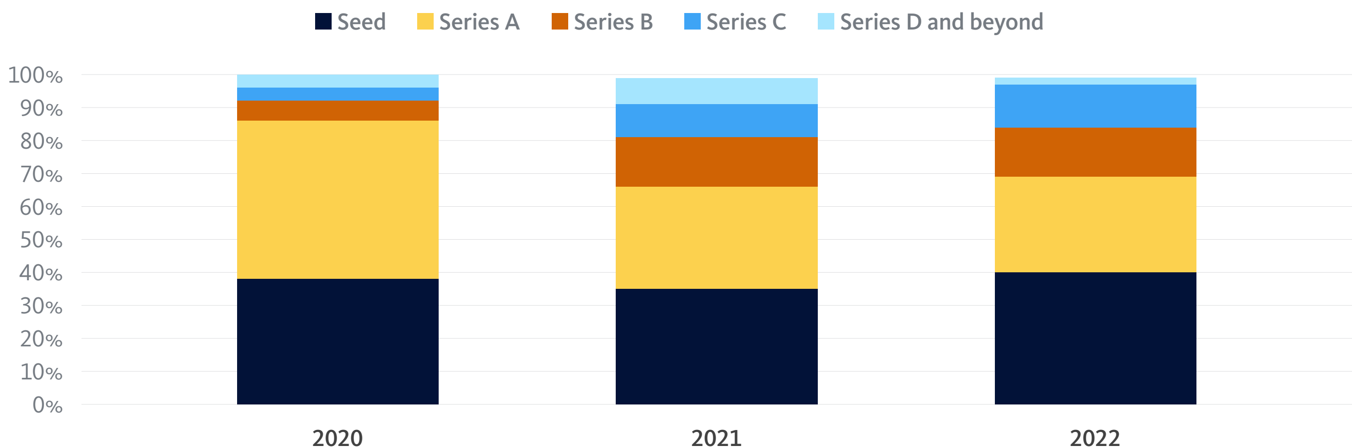
Representation of financings, by series

The graph below indicates the overall representation of financings included in the *Deal Points Report*, by series of financing (i.e., Series Seed, Series A, Series B, Series C, Series D and beyond).



Number of financings, by year and series

The graph below illustrates the overall representation of financings included in the *Deal Points Report*, by year and series of financing (i.e., Series Seed, Series A, Series B, Series C, Series D and beyond). We note that 2022 followed a similar pattern to the three-year trend covered by the *Deal Points Report*, with the highest concentration of financings in Canada being in Series Seed and Series A financings.



Montréal biotech seeks better treatments for those with metabolic disorders

Location of issuers

The chart below displays the location of issuers for Canadian financings included in the *Deal Points Report*, expressed as a percentage of all included Canadian issuers.

The trend in 2022 was similar to the three-year average covered by the *Deal Points Report*, with the highest concentrations in Ontario and British Columbia. The data in the chart below also shows an increase in the number of financings completed in Alberta, correlating to the expansion of Osler's Calgary-based Emerging and High Growth Companies practice which is increasingly servicing Alberta and, together with our Vancouver and Toronto practices, the other Prairie Provinces. Additionally, the CVCA reported that Québec-based companies received 25% of all venture capital proceeds invested in Canada in 2022. Given this exciting growth, and as a result of the recent high-profile additions to Osler's Montréal-based Emerging and High Growth Companies practice, we expect to see additional increases in Québec-based financings in the 2023 data for the next release of the *Deal Points Report*.

Province	Ontario	Québec	British Columbia	Atlantic Provinces	Manitoba	Saskatchewan	Alberta
Percentage of issuers (2022 only)	53%	10%	21%	3%	1%	2%	11%
Percentage of issuers (2020-2022 total)	56%	12%	19%	2%	1%	2%	9%

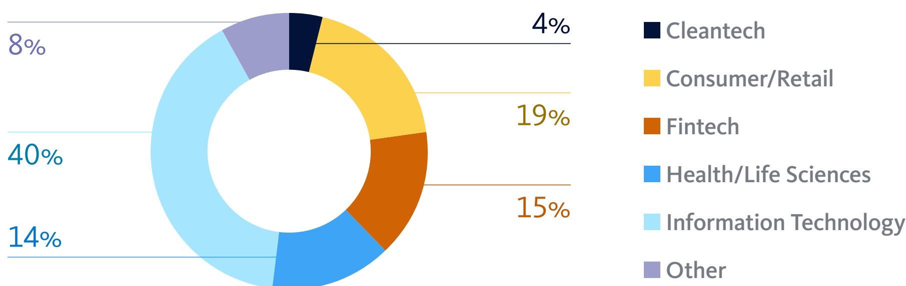
Financing transactions by Osler office

With a truly national practice, Osler plays a consistent role acting as a trusted advisor to support financing transactions across Canada. The map below shows, from 2020 to 2022, that Osler advised on 353 financing transactions across its offices as well as the number of deals and percentage growth from 2020 to 2022 by office. For purposes of the infographic, each office was counted for every financing that it assisted with. This resulted in some double counting where multiple Osler offices were involved in the same financing included in the *Deal Points Report*.

Company distribution by industry

The financings included in the *Deal Points Report* were for companies distributed across the following industries:

- Cleantech
- Consumer/Retail (including robotics, supply chain, logistics and consumer retail)
- Fintech
- Health/Life sciences
- Information technology (including artificial intelligence, blockchain, adtech, edtech and cybersecurity)
- Other (industries which do not reasonably fit within the foregoing industry categories)



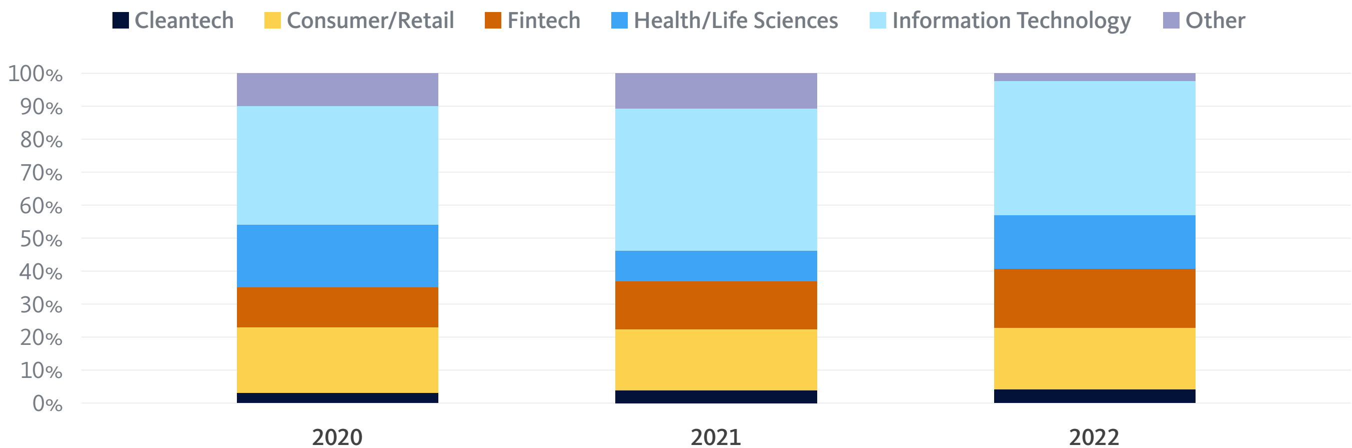
Location of issuers based on industry

The chart below shows the location of Canadian companies, by industry, for financings included in the *Deal Points Report*, expressed as a percentage of all included Canadian companies.

	Cleantech	Consumer / Retail	Fintech	Health / Life Sciences	Information Technology	Other
Alberta	0.3%	0.6%	1.9%	0.3%	4.1%	0.6%
British Columbia	0.9%	2.5%	2.5%	2.8%	9.1%	0.3%
Manitoba	0%	0.6%	0%	0%	0.3%	0%
New Brunswick	0%	0%	0%	0%	0.6%	0.3%
Newfoundland and Labrador	0%	0%	0%	0%	0.3%	0%
Nova Scotia	0%	0%	0%	0%	0.6%	0%
Ontario	2.2%	11.0%	9.1%	9.4%	23.6%	2.5%
Québec	0.6%	2.5%	1.3%	2.8%	2.8%	0.9%
Saskatchewan	0%	1.3%	0.3%	0%	0.3%	0.3%

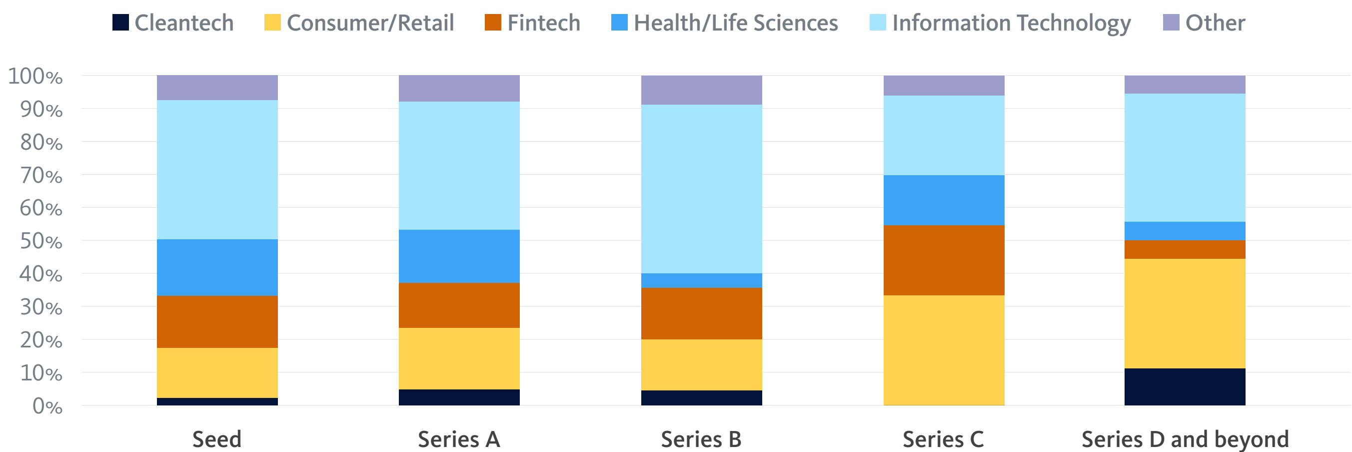
Issuers by industry, by year

This chart below illustrates the overall representation of industries for financings included in the *Deal Points Report*. Over the three-year period covered by the *Deal Points Report*, the largest increase in the number of financings by industry was in fintech (5.89% increase) and information technology (4.65% increase).



Issuers by industry, by series

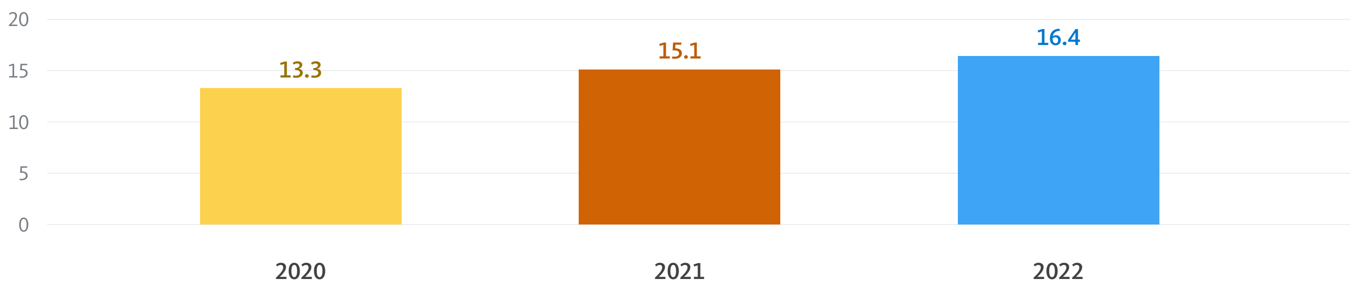
The overall representation of various industries for financings included in the *Deal Points Report*, based on series of financing, is set out below. Information technology represented the largest number of companies (42%) that raised a financing round across all series of financings, except for Series C, where companies in the consumer/retail industry raised the largest number (33%) of rounds.



Breakdown of women founders

The chart below illustrates the breakdown of companies included in the *Deal Points Report* with one or more women founders. Women-founded companies represented 15% of all companies included in the *Deal Points Report*, with an increase in representation in 2022, where women-founded companies represented 16.4% of all companies that raised a financing round in that year.

Percentage of companies with women founders



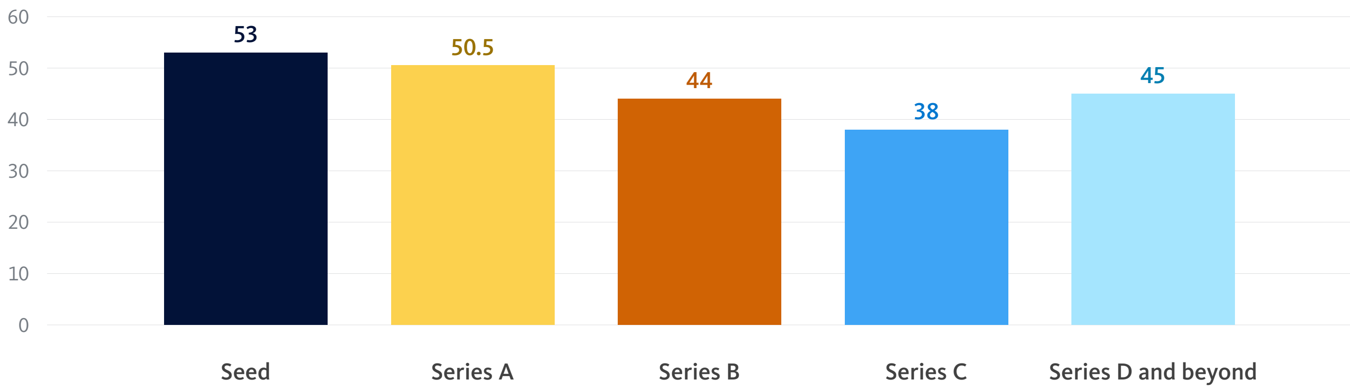
As compared to the last *Deal Points Report*, we see a higher concentration of women-founded companies raising Series A (19%) and Series B (21%) financing rounds, a significant increase from the data reported in 2021 (where only 10% of women-founded companies raised a Series A round and 11% raised a Series B round). The data demonstrates that, even in a challenging financing environment, women-founded companies continued to grow and secure future rounds of financing.

To help shine a light on the success, stories and journey of women founders, Osler successfully ran five sessions as part of its Women in Emerging and High Growth Companies Leadership Series. In addition, in 2022, Osler launched its Seat at the Table: Women Innovating for Tomorrow's Economy Initiative. Learn more about Osler's programs for women founders, including links to prior webinar series here.

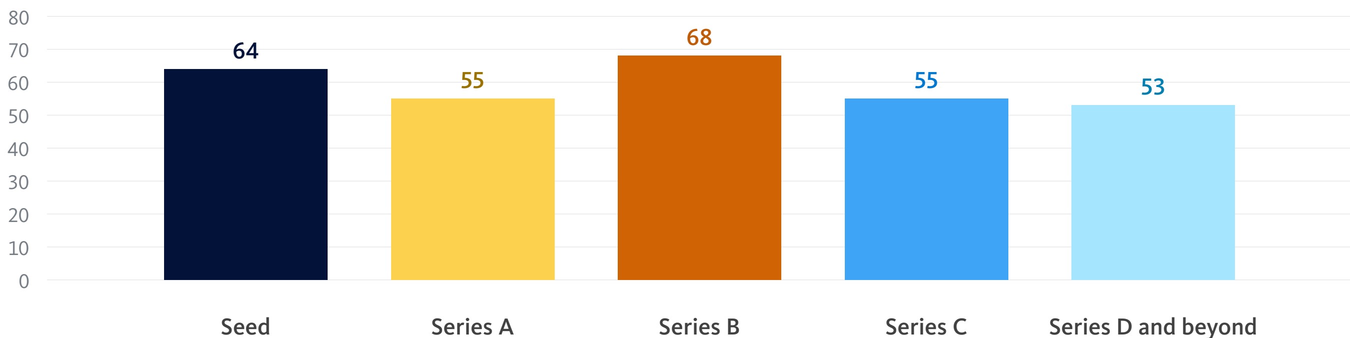
Mercator AI brings competitive intelligence to construction industry

Median time between term sheet signing date and financing closing date (by series)

This chart below represents the median time, in days, between the date on which a term sheet was signed and the initial closing of the related financing. Consistent with expectations, earlier stage financings tended to take more time to close than later stage financings, in large part due to the common practice in those later stage rounds of largely maintaining terms and document structures from prior rounds of financing, with only necessary changes to the terms required by the incoming lead investor(s).



For 2022, transactions across all series took longer to close, as indicated in the chart below. Heightened uncertainty in the market, coupled with longer due diligence periods, resulted in the average time to close financings increasing across the board. In 2022, seed stage financings experienced a 20% increase in the number of days required to close, with Series B financings experiencing the largest increase, taking 68 days from the date a term sheet was executed until the financing closed (a 54% increase above the three-year average).



Valuation and investment intelligence

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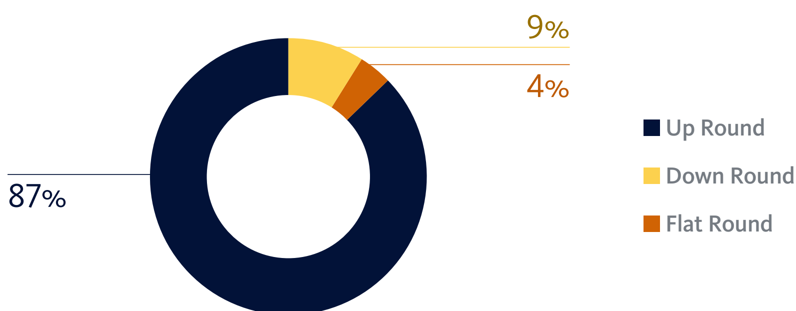
Valuation for financings

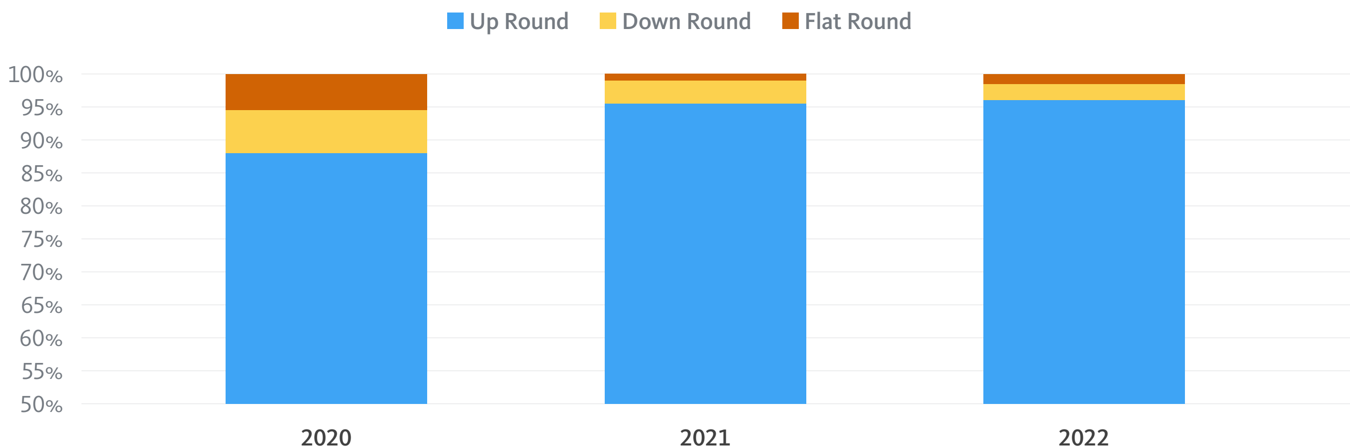
The chart below shows the breakdown of valuation direction for the financings included in this report, reflected as up round, down round and flat round. Notwithstanding the challenging economic conditions of 2022, there was no material change in the number of down rounds financings, where 7% of all financing rounds qualified as down rounds, and less than 2% of all rounds qualified as flat rounds. These findings are consistent with those in comparable reports published by U.S. law firms, where 5%-10% of all deals reported qualified as down rounds.



Valuation for financings, by year

For financings included in the *Deal Points Report* for which data was available, the chart below reflects the breakdown, by year, of valuation direction over the three-year period covered by the *Deal Points Report*.

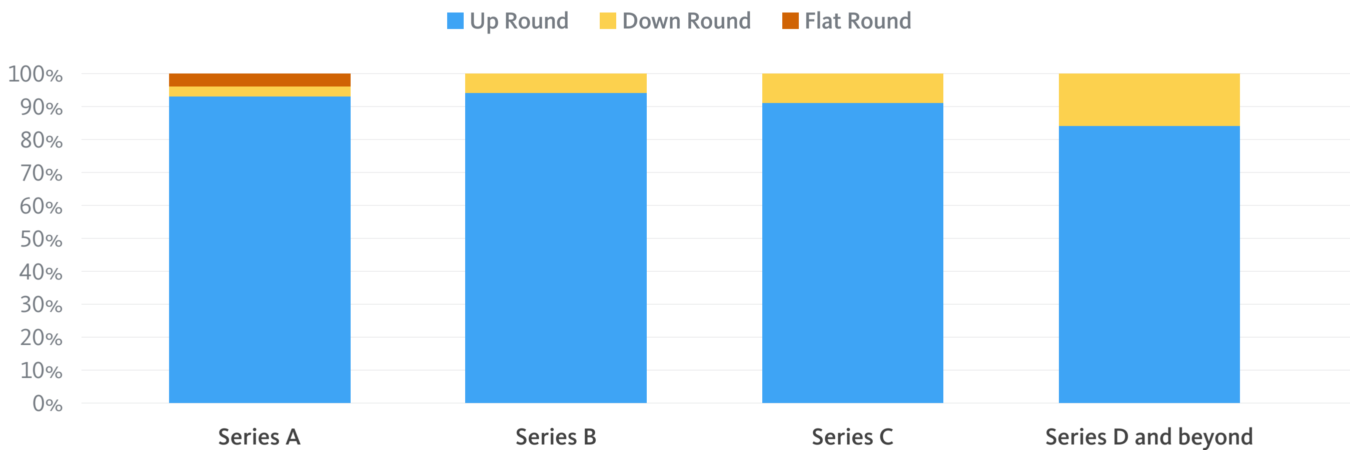
The higher incidence of down rounds in 2020 is a function of a smaller sample size of transactions surveyed in 2020, where the total number of down rounds completed in 2020 is consistent with the total number of down rounds completed in both 2021 and 2022. Notwithstanding market uncertainties in 2022, the number of down rounds were below the three-year average covered by the *Deal Points Report*. One explanation for this is that in 2022, many companies that might have faced the prospect of completing a down round with less friendly terms may have deferred completing an equity financing altogether, or alternatively, decided to raise a bridge round or round extension on the same terms and valuation as the prior round or issue convertible instruments (such as SAFEs or convertible notes) to avoid potentially punitive valuations or financing terms. The latter point, in particular, is supported by Osler's data on bridge financings, which show that in 2022 we completed 30% more bridge financing rounds as compared to 2021. We will be interested to see whether the 2023 data for the next version of the *Deal Points Report* shows an increase in the number of down rounds, as some companies may be forced to raise equity rounds of financing in 2023, regardless of the terms that are offered by investors.



Valuation for financings, by series

For financings included in the *Deal Points Report* for which data was available, the breakdown, by series, of valuation direction is reflected as up round, down round and flat round in the chart below.

Of those companies that completed a down round during the three-year period covered by the *Deal Points Report*, the highest incidence of down rounds occurred in later stage financings (i.e., Series C, Series D and beyond). This aligns with our expectations: companies completing later stage financings are more susceptible to market pressures that affect their financial and customer metrics, which in turn influences investor demand and valuations. This data is also consistent with U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends* which showed that U.S. emerging companies experienced a sharp increase in the number of down rounds for later stage financings.



Valuation increases by industry

The chart below illustrates the average percentage increases in valuations between financing rounds, over the three-year period covered by the *Deal Points Reports*, broken down by industry. As compared to last year's *Deal Points Report*, the two most significant changes were in consumer/retail (345%, versus 165% last year) and fintech (500%, versus 228%), resulting from a small number of companies in each category that saw material increases in their valuations between rounds.

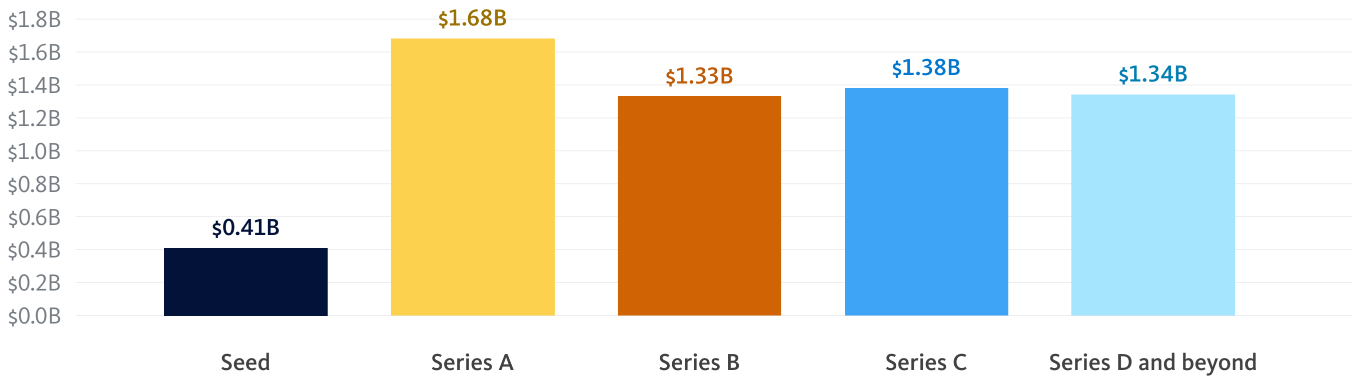
Industry	Cleantech	Consumer / Retail	Fintech	Health / Life Sciences	Information Technology	Other
Average percentage increase in valuations	194%	345%	500%	141%	267%	105%

When looking at the relative increase in valuations between financing rounds for 2021 and 2022, other than the consumer/retail and "other" industries, all industries saw larger valuation increases between financing rounds in 2021. This is consistent with 2021 being a record-breaking year for venture investing in Canada.

	Cleantech	Consumer / Retail	Fintech	Health / Life Sciences	Information Technology	Other
2021	367%	231%	824%	354%	411%	83%
2022	108%	502%	287%	64%	166%	214%

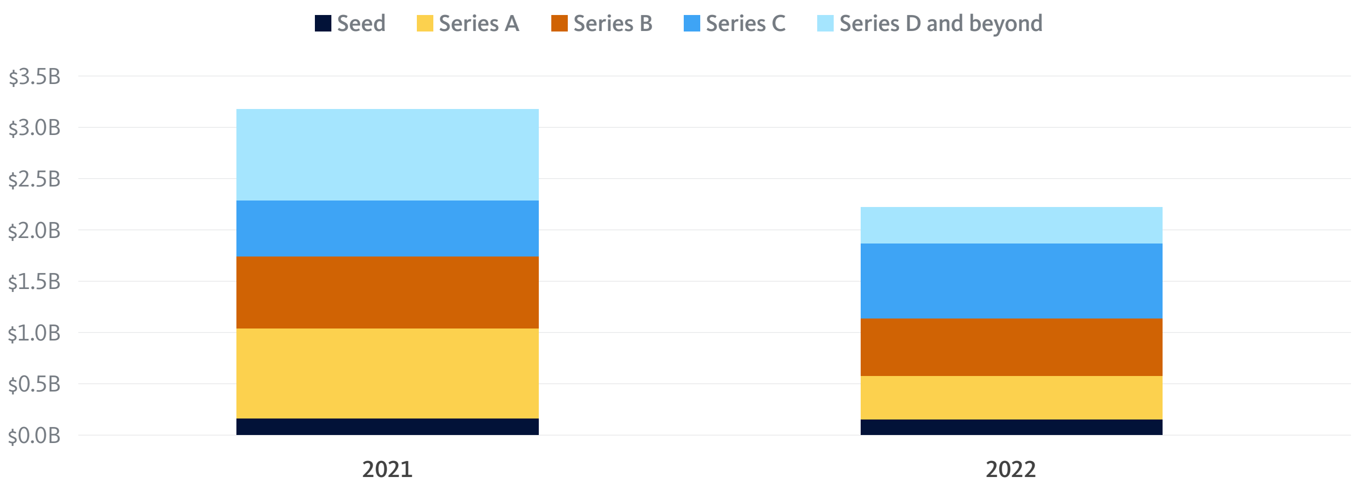
Total investment amount, by series (in billions of USD)

The chart below reflects the total investment amount in U.S. dollars (including for any initial closing and follow-on investment for that same transaction) for financings included in the *Deal Points Report*, based on series of financing. The total investment value of all deals covered by the *Deal Points Report* is US$6.13 billion.



Total investment amount, by series (in billions of USD), by year

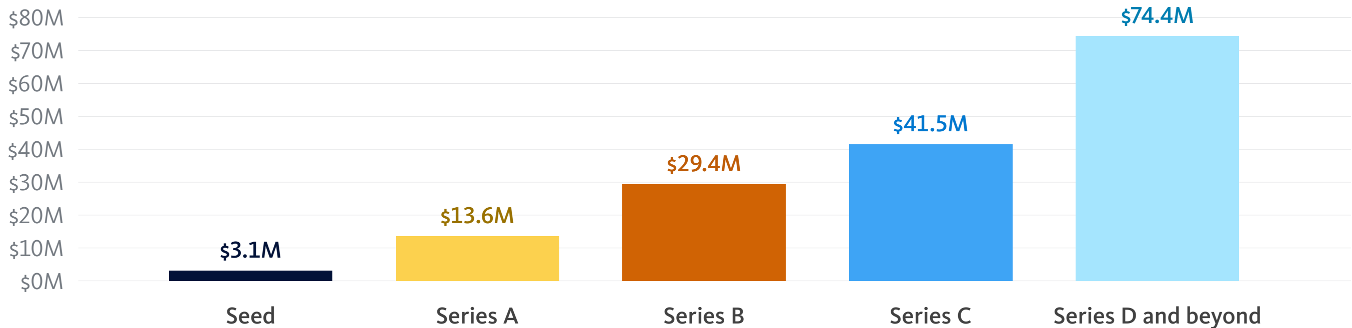
The total investment amount in U.S. dollars (including for any initial closing and follow-on investment for that same transaction) broken down by series, for financings completed in 2021 and 2022 is shown below. The data clearly shows the record-breaking nature of 2021, and the material decrease in investments in companies raising later stage financings between 2021 and 2022. As noted above, one explanation for the fewer late stage financings is that many established companies raised a bridge financing round (using convertible notes or SAFEs) or round extension in 2022, in an effort to extend companies' runway before raising their next financing round. Osler saw a 30% increase year-over-year in such bridge financings.



Betting on innovators leveraging trends like AI, Web3 and compute

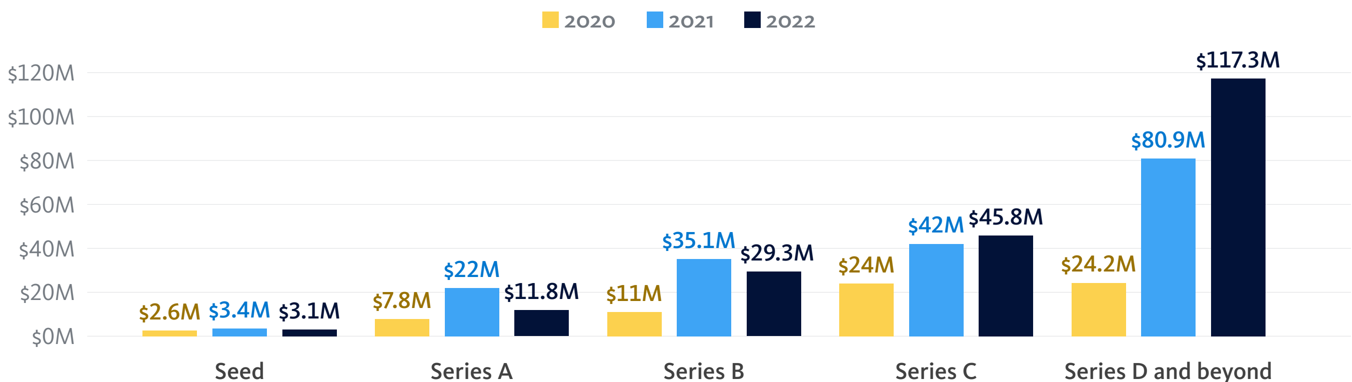
Average investment amount, by series (in millions of USD)

The chart below shows the average investment amount (including for any initial closing and follow-on investment for that same transaction) for financings included in the *Deal Points Report*, based on series of financing.



Average investment amount, by series (in millions of USD), by year

For all years captured by the *Deal Points Report*, the average investment amount in seed financing rounds remained consistent at $3.1 million. In 2022, there was a decline in average round sizes across both Series A and Series B financings. The sharp increase in the average size of Series D and beyond financings reflected in the chart below can be attributed to two factors: (i) a sharp decline in the number of later stage financings in 2022, and (ii) a small number of large financings in those fewer rounds, driving up the average.

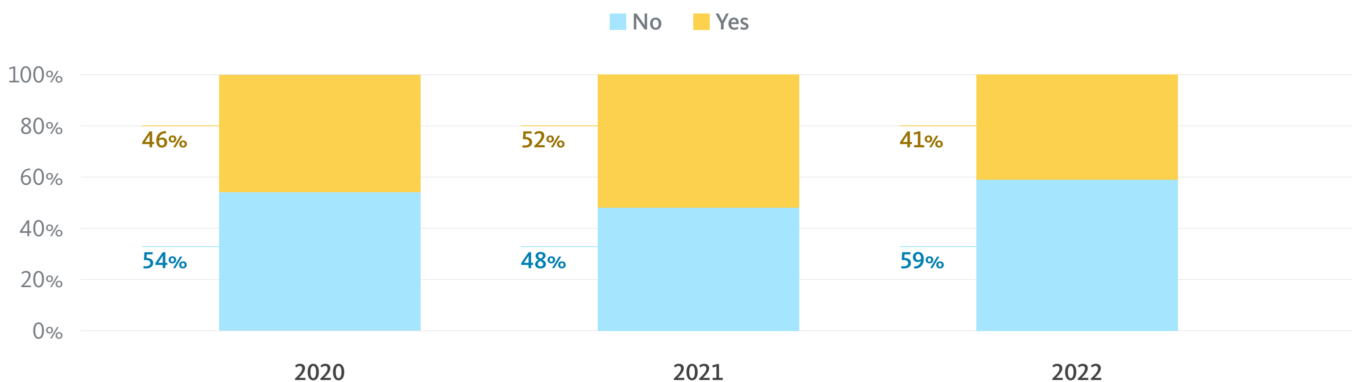


3

Financing structure intelligence

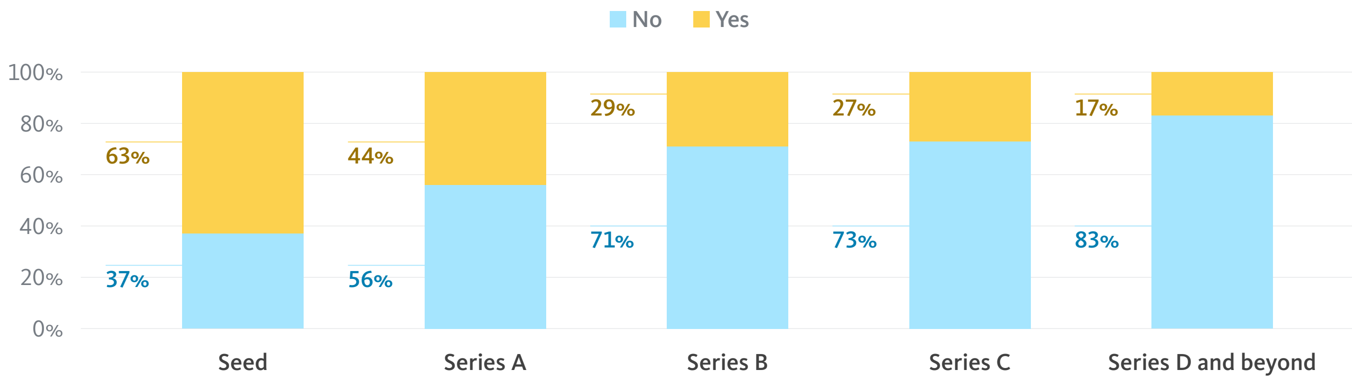
Conversion of convertible securities (such as SAFEs or convertible notes) in connection with financings, by year

The chart below displays the proportion of financings in which a convertible instrument (such as a SAFE or convertible note) was converted in connection with financings included in the *Deal Points Report*, by year. As the data suggests, the conversion of convertible instruments, like SAFEs, has been and continues to be a common feature of venture financings. The data presented in the chart that follows the one below also elaborates on certain nuances related to series of financing, including as it relates to changes from 2021 to 2022. Due to the increased number of bridge financing rounds (by way of SAFEs and convertible notes) that closed in 2022, we expect that this number will increase in 2023.

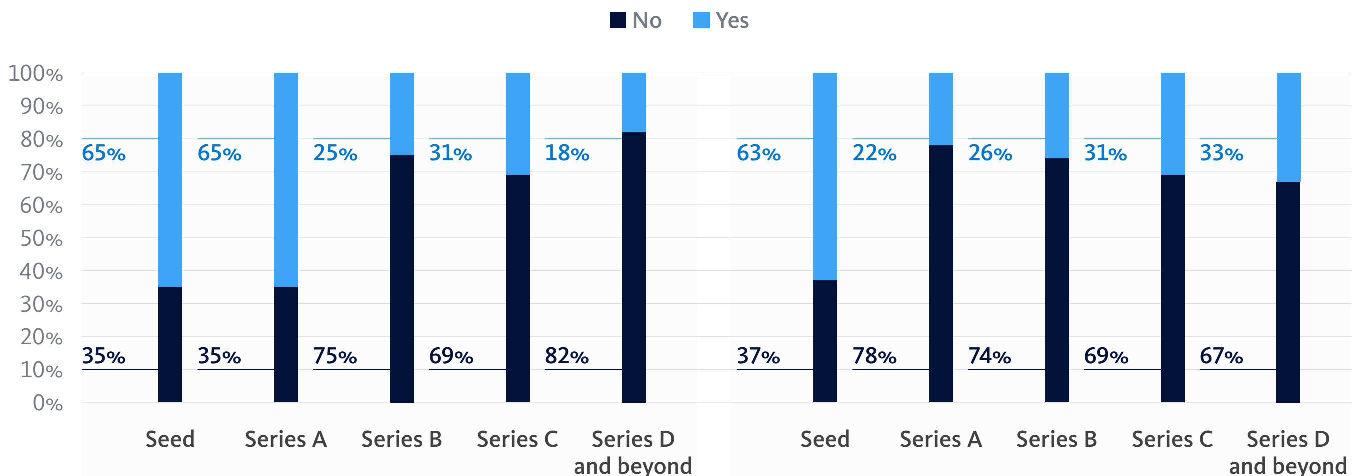


Conversion of convertible securities (such as SAFEs or convertible notes) in connection with financings, by series

The proportion of financings in which a convertible instrument (such as a SAFE or convertible note) converted in connection with financings included in the *Deal Points Report*, based on series of financing, is represented below. Generally, this data is consistent with expectations, in that convertible instruments tend to be issued prior to, and converted in connection with, earlier stages of financings of companies.



Despite the data provided above, it is worth noting that the charts below – comparing that same data between 2022 and 2021 – show a pronounced increase in the use of convertible instruments in Series D and beyond financings. This change is consistent with our observations over 2022, particularly with respect to certain later stage companies. In circumstances where certain of these companies received (or expected) valuations for new rounds of financing in 2022 that were equal to or less than the valuation received in their last financing in 2020 or 2021, convertible instruments were a common option to extend the cash runway for the company while giving it an opportunity to continue to grow and ideally exceed the valuation of its last equity financing by the time it was ready to complete another equity financing.



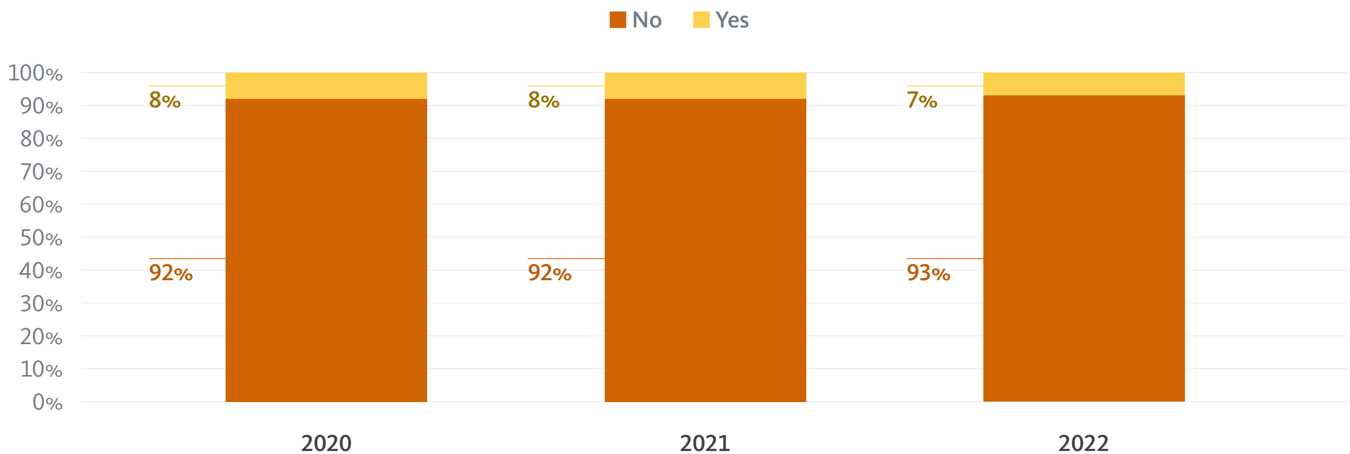
Minimum investment required to be invested at the initial closing of the financing

This figure shows the percentage of financings included in the *Deal Points Report* in which the term sheet, or transaction documents, included a provision expressly requiring that the company raise a minimum investment amount before it could complete its initial closing for the financing.

Yes No

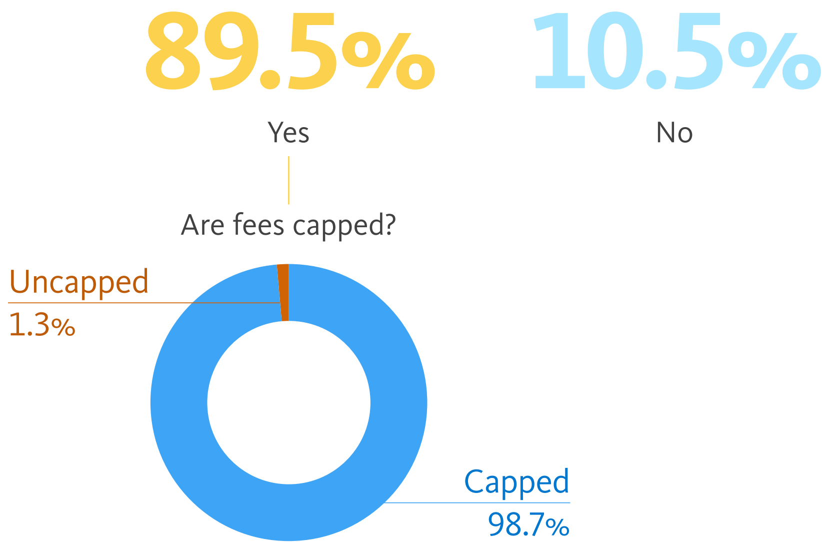
Minimum investment required to be invested at the initial closing of the financing, by year

The chart below illustrates the percentage of financings included in the *Deal Points Report* in which the term sheet or transaction documents, included a provision expressly requiring that the company raise a minimum investment amount at its initial closing, by year. The data shows that minimum investment commitments are generally atypical, even amidst the market changes experienced in 2022, which might have been expected to make terms such as these more common.



Company covering investor fees in connection with the financing, capped vs. uncapped

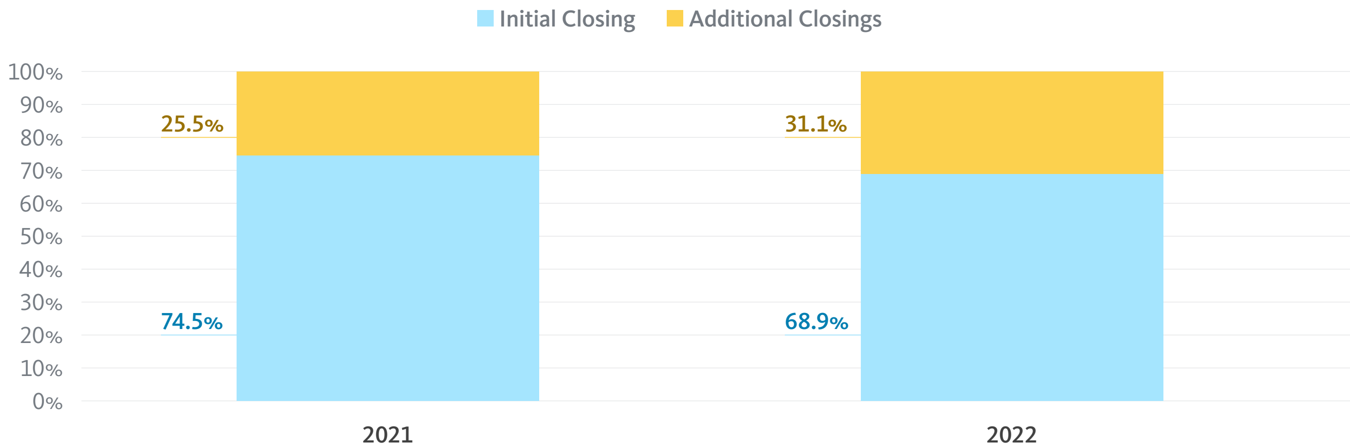
Of the financings included in the *Deal Points Report*, the overwhelming majority required the company to cover all or a portion of the investor fees. Of those 88.9% of financings where investor fees were covered, the vast majority of such financings placed a dollar cap on the amount of reimbursable fees, as indicated in the pie chart below.



Financings with multiple closings, allocation of proceeds

For financings included in the *Deal Points Report*, where the financing included multiple closings, the allocation of the applicable round's proceeds between the initial closing and subsequent closing is displayed below. Consistent with market expectations, the majority of the proceeds invested in a financing round are funded at the initial closing.

Despite the data above, it is worth noting that the chart below – comparing that same information for 2022 and 2021 – shows a modest increase in the percentage of funds raised through additional closings in 2022 as compared to 2021. We believe that this change in the data is the result of shifting market conditions, where companies took longer to establish their investor syndicates, and investors required additional time to obtain internal approvals to make investments.



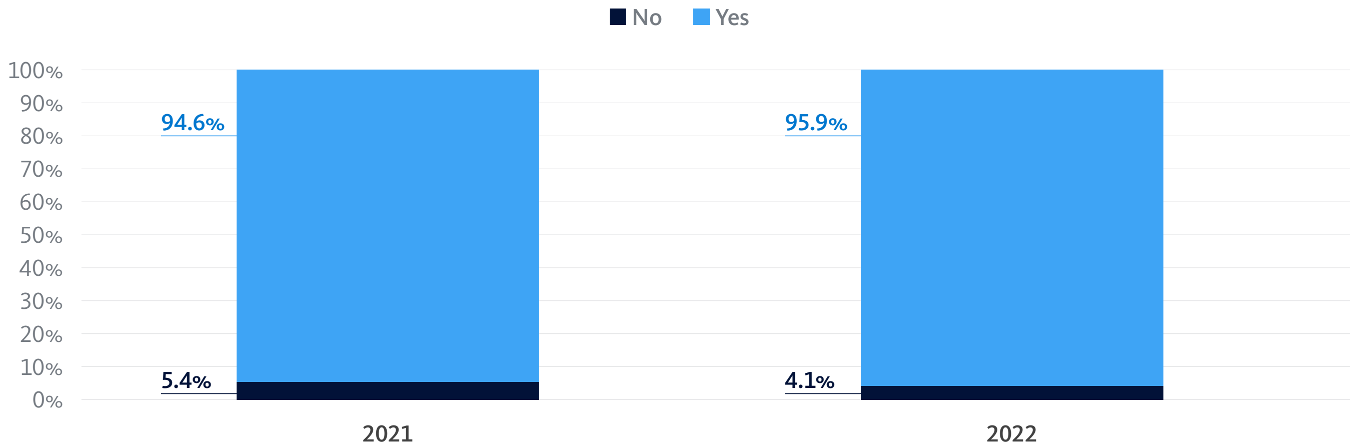
Use of CVCA/NVCA based forms of principal agreements in financings

For financings included in the *Deal Points Report*, the proportion of those financings which used transaction materials based on the CVCA/National Venture Capital Association (NVCA) model financing documentation is set out below. This data is consistent with our expectations in that market practice largely relies on the CVCA/NVCA model financing agreements, with only a small minority of companies continuing to transact on non-CVCA/NVCA documentation (for example, using a single Unanimous Shareholders Agreement in lieu of a separate Voting Agreement, Investors' Rights Agreement and a Right of First Refusal and Co-Sale Agreement).

95.7% Yes

4.3% No

Comparing that same data, but between 2022 and 2021, reliance on the CVCA/NVCA model financing documentation continued to be the market standard approach for companies raising financings in 2022, despite the changing market environment that year.



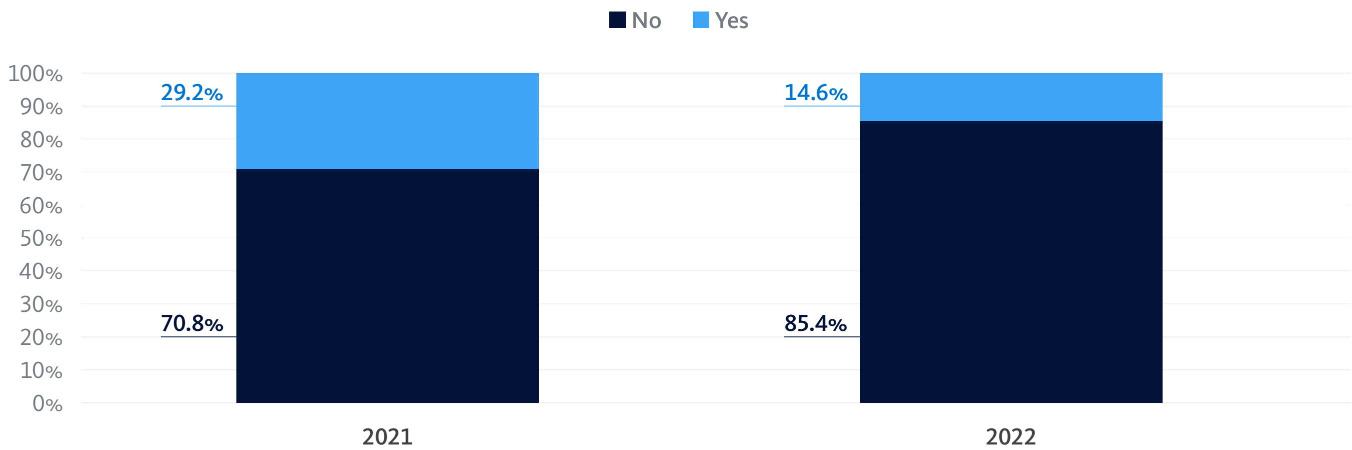
Existence of secondary transactions in financings

The proportion of financings in the *Deal Points Report* which included a secondary transaction is represented below. Secondary transactions typically occur at the same time that a company completes a financing, and allow existing shareholders (including founders) to sell a portion of their existing equity to new or existing investors to obtain some liquidity.

Breaking this data down between 2022 and 2021, the secondary transactions were significantly less common in 2022 as compared to 2021, which is consistent with our expectations as a result of changes to the market in 2022,

Qui Identity focused on tech to speed adoption of authentic data

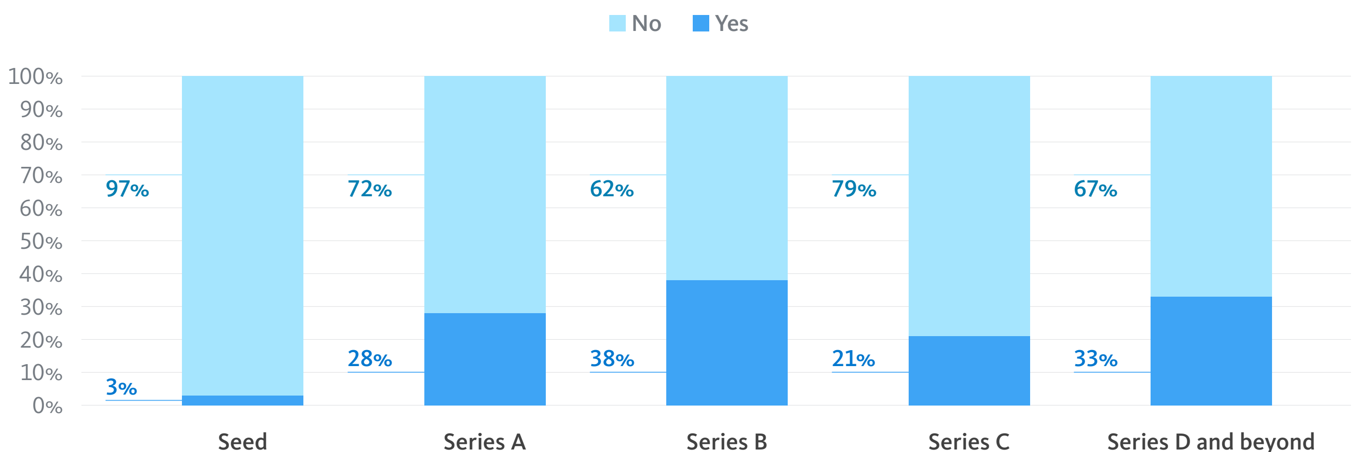
where companies were generally looking to ensure that every dollar raised was allocated towards extending the company's runway, rather than providing liquidity to its shareholders.



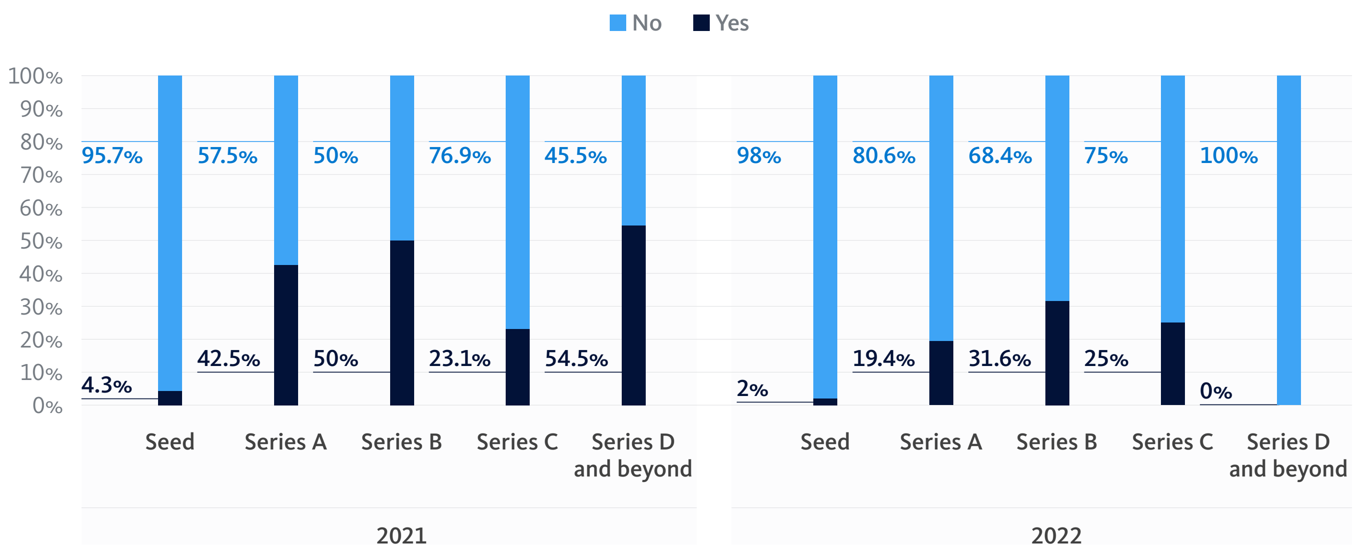
Existence of secondary transactions in financings, by series

The chart below reflects the proportion of financings in the *Deal Points Report* which included a secondary transaction, by series of financing. These results are consistent with expectations; secondary transactions generally occur at and following the Series A stage, where

- companies are gaining traction in their market
- the founder and management teams have generated meaningful value in the company, giving investors confidence in the existing (and future) realizable value of the company's existing and outstanding equity
- particularly with respect to founder teams, employee shareholders have taken below market compensation to continue to drive revenue back into the business in order to scale, and investors seek to compensate these employee shareholders by providing liquidity opportunities



Although the chart above indicates that secondary transactions are more common at and following the Series A stage, the charts below – comparing that same data between 2021 and 2022 – show a significant overall drop in secondary transaction activity. Oftentimes, secondary transactions are a function of the existence of excess capital commitments for a particular company among current and new investors, which, if invested at a given valuation, would result in excess and unwanted dilution to the existing shareholder base. The data below is consistent with our expectations, particularly with respect to secondary transaction activity at the Series D and beyond stages, where valuations and investor demand saw compression in 2022, along with a decrease in overall demand for positions in companies at these stages. Equally, however, it is not surprising to still see some secondary transactions in 2022, where sufficient capital and investor demand were available to certain highly sought after companies in Series A to Series C stages.

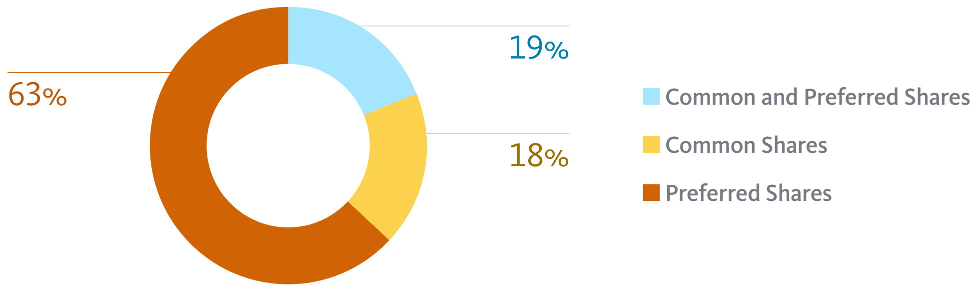


Type of equity sold in secondary transactions in financings

For financings included in the *Deal Points Report* that include a secondary transaction, a breakdown of the type of equity security sold in these secondary transactions is shown below. These results show that preferred shares make up 63% of all equity sold in secondary transactions covered by the *Deal Points Report*. The preferred shares referred to in the chart include

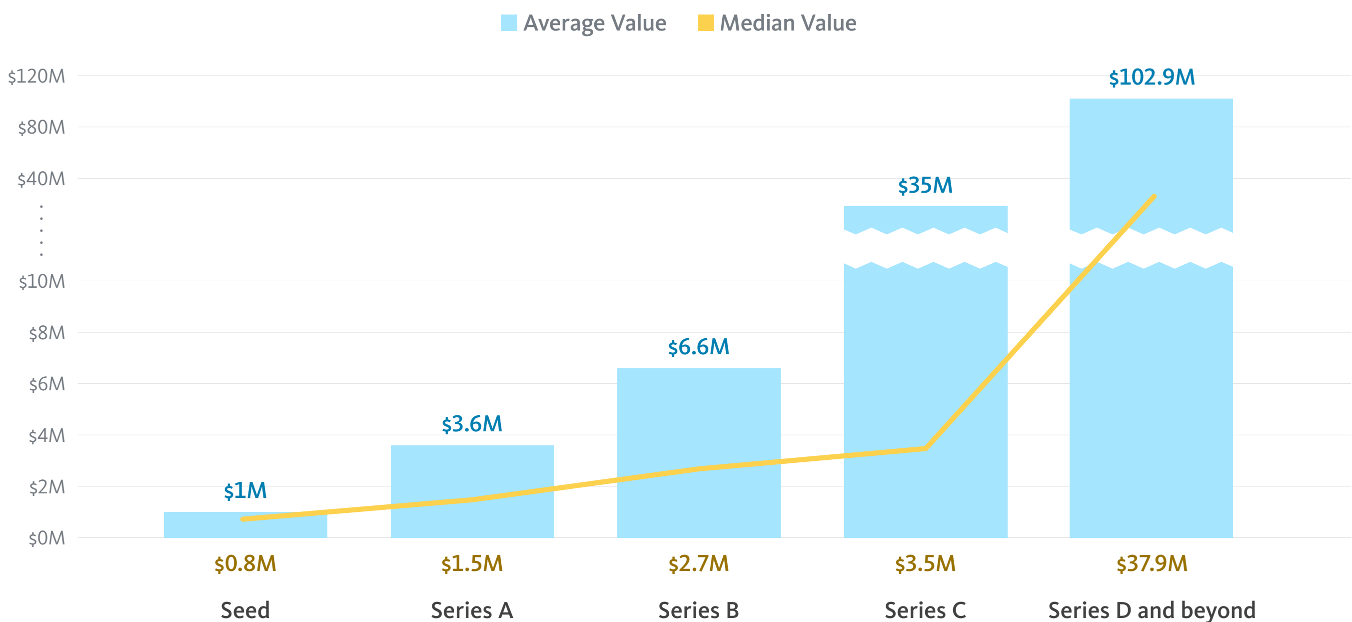
- preferred shares initially held by a selling shareholder
- common shares (or other securities) that are, prior to the closing of the secondary transaction, exchanged for preferred shares

The process through which the common shares are exchanged for preferred shares is customarily referred to as an "up-vert." While the sale of only common shares by a selling shareholder to new and existing investors is the least common occurrence, at 18%, it is by no means uncommon.

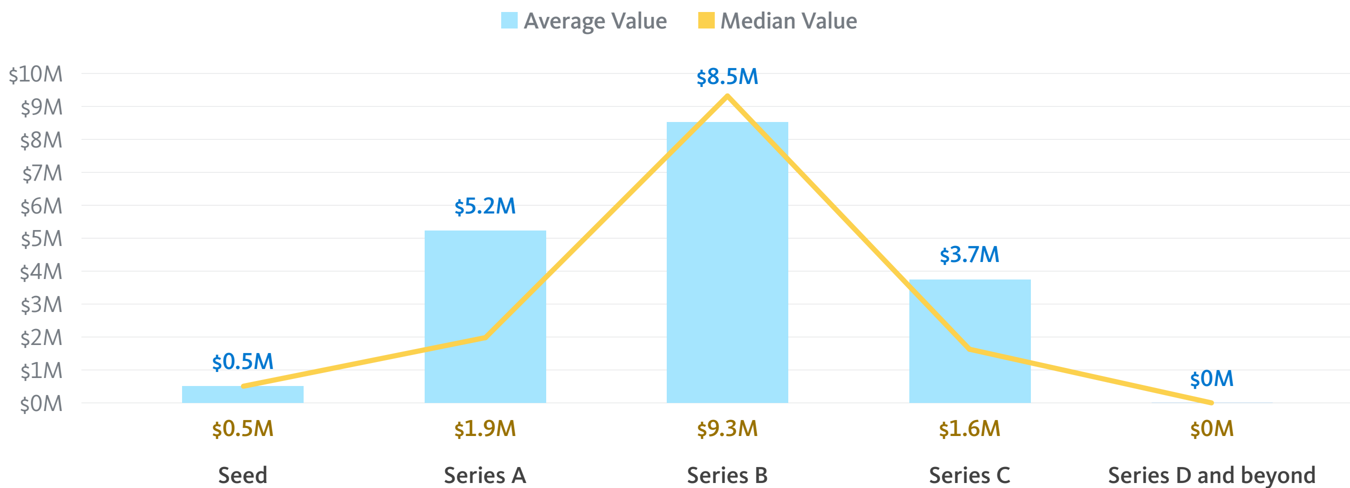


Average and median dollar amount of secondary transactions in financings, by series

This chart shows financings included in the *Deal Points Report* that include a secondary transaction, and the average and median dollar amount of those secondary transactions by series of financing. The data is affected by the increase in outsized secondary purchase amounts during 2020 and 2021. For example, and as indicated above in the "Existence of secondary transactions in financings, by series" chart for 2022, there were no secondary transactions at the series D and beyond stage of financing in 2022. As a result, the data below for this stage of financing only covers 2021 and 2020 numbers. To understand the impact of a secondary transaction on a company's valuation, please see (link).



Although the chart above for all three years covered by the *Deal Points Report* reflects significant dollar values for secondary transactions at the later stages of financing, the secondary transaction average and median dollar values for 2022, as reflected in the chart below, are consistent with our expectations, where 2022 saw a material drop in dollars allocated to secondary transactions at all stages of financings, but particularly in later stage financings.

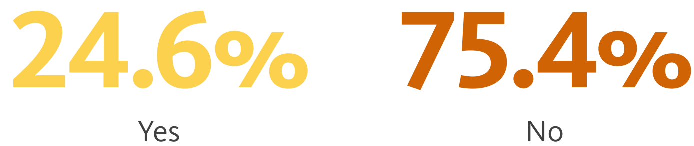


Use of amalgamation structures in secondary transactions

For financings in the *Deal Points Report* that include a secondary transaction, the proportion of those transactions that rely on an "amalgamation structure" is shown below. In the context of a secondary transaction, a selling shareholder will generally be selling shares of the company to new and existing investors, resulting in the new investor acquiring shares with an initial cost base and paid up capital, on a per share basis, which is lower than the price being paid for those shares in the secondary transaction. This "mismatch" can potentially result in undesirable tax implications for the investor in certain types of exit transactions. As a result, some investors may request that the secondary transaction be completed using an amalgamation structure, which allows the

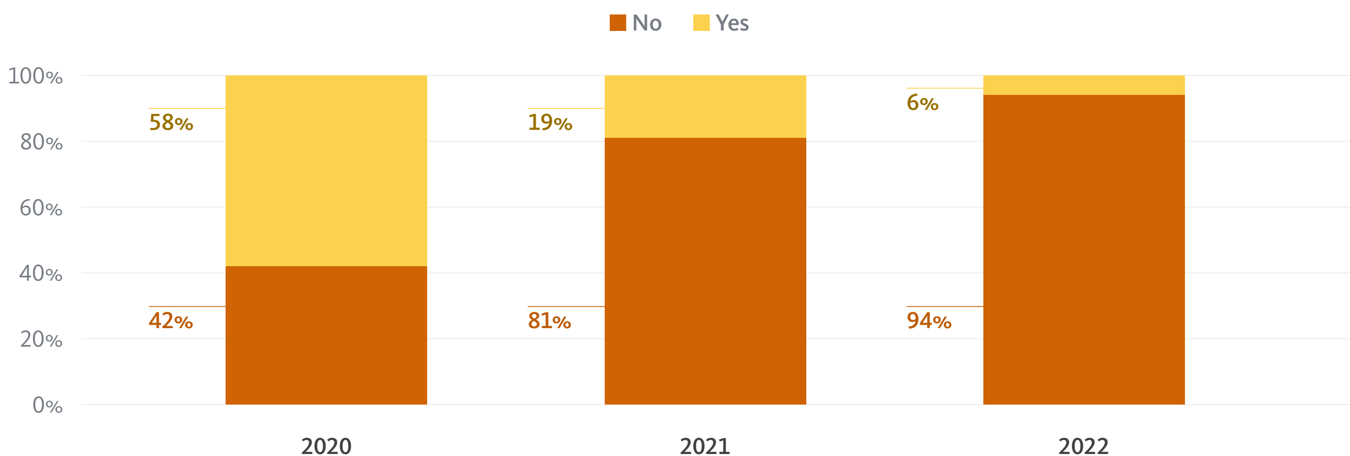
Waabi moves commercialization of driverless trucks into high gear

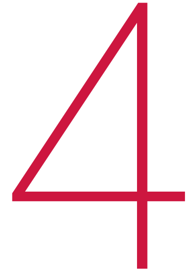
investors to end up with shares with an initial cost base and paid up capital, on a per share basis, which is equal to the price paid by investors for the secondary shares. The structure requires the secondary investors to initially purchase shares of an "investco" entity, which in turn uses the subscription proceeds to purchase the secondary shares. Following its purchase of the secondary shares, "investco" amalgamates with the company. The use of the amalgamation structure is intended to help eliminate the mismatch referred to above, as well as the resulting tax complications.



Use of amalgamation structures in secondary transactions, by year

For financings in the *Deal Points Report* that include a secondary transaction, the proportion of those transactions that rely on an amalgamation structure, by year is set out below. These results indicate that 2022 saw a sharp drop in instances where an amalgamation structure was used. Our expectation is that this is possibly the result of less investor apprehension regarding the potential tax implications referred to in the prior chart, as well as the fact that investors may have been less concerned about the mismatch noted above, which can be the case where the dollar amount of the secondary transaction is not large (which, as indicated in the preceding charts, was a common feature of secondary transactions in 2022, in comparison to prior years). Additionally, we also expect that the additional time, complexity and cost associated with incorporating amalgamation structures in secondary transactions – all aspects of a financing transaction that companies and investors were especially intent on avoiding in 2022 – contributed to the decreases in instances in which these structures were used.





Financing terms intelligence

Financings which provide for a senior ranking liquidation preference

The proportion of financings in the *Deal Points Report* which included a senior ranking liquidation preference in favour of the holders of preferred shares is indicated below. A senior ranking liquidation preference is the right of a holder of preferred shares to receive at least the original price per preferred share paid by the investor for those preferred shares, or some multiple thereof based on the rights associated with the preferred shares, prior to and in preference to subordinate classes of shares of the company in the context of a sale of the company and a distribution of those sale proceeds to the shareholders of the company. Subordinate classes of shares include common shares, but on occasion (as described below), may sometimes include other junior ranking classes of preferred shares. These results are consistent with expectations in that senior ranking liquidation preferences are a common feature of all financings.

100%

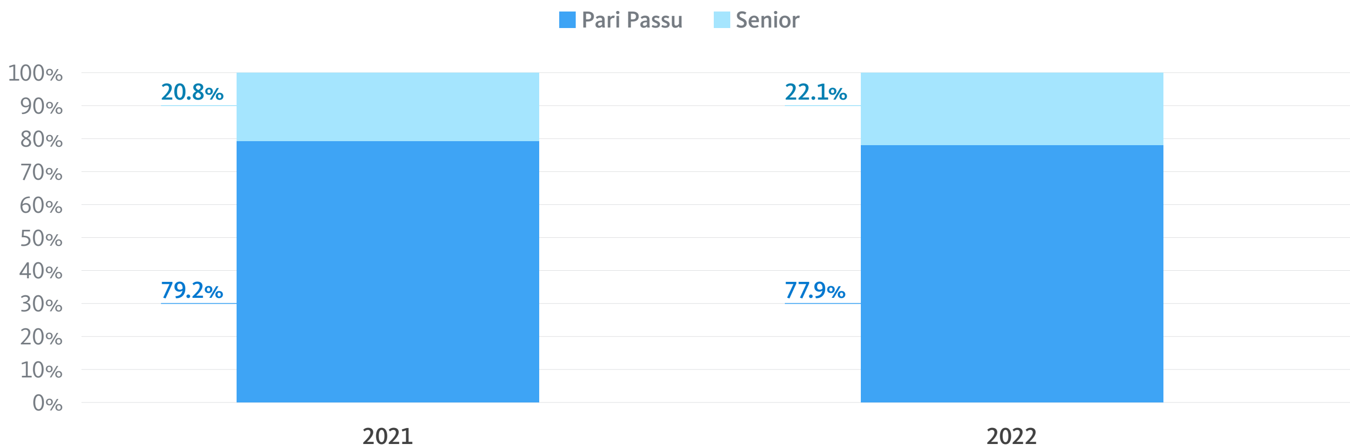
of deals had some form of liquidation preference (Pari Passu or Senior)

Financings which provide for *pari passu* or senior ranking liquidation preferences

The proportion of financings in the *Deal Points Report* which included either *pari passu* or senior ranking liquidation preferences amongst the holders of preferred shares is shown below. As indicated above, sometimes certain classes of preferred shares provide for a senior ranking liquidation preference that ranks ahead of other classes of preferred shares. For example, a newly issued class of Series B preferred shares may rank senior in liquidation preference to the existing Series A preferred shares. In the scenario where the senior ranking liquidation preferences are triggered, the foregoing example implies that, upon

a sale of the company where it is not beneficial for the holders of preferred shares to convert into common shares, the holders of Series B preferred shares would receive their liquidation preference in first priority, followed by the holders of Series A preferred shares, with any residual value then split amongst the holders of common shares. Alternatively, in that same context, but where the Series A preferred shares and Series B preferred shares referred to above rank *pari passu* (at the same level), the holders of all such preferred shares would receive their liquidation preference at the same time and on a pro rata basis, with any residual value then split amongst the holders of common shares. The results below are consistent with expectations in that the majority of financings typically provide for a *pari passu* liquidation preference with all classes/series of preferred shares ranking equally, instead of a senior ranking liquidation preference.

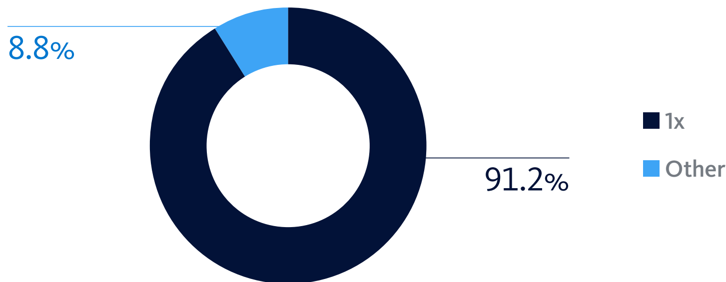
Comparing *Deal Points Report* data from 2022 and 2021 regarding the proportion of those financings which included either *pari passu* or senior ranking liquidation preferences amongst the holders of preferred shares, notwithstanding market uncertainty, there was not a material increase in the use of senior liquidation preferences (often viewed as a more "investor friendly" term), with 2022 falling slightly below the three-year average for all included financings. The below is consistent with the U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, which showed between 17%-30% of U.S. financings included a senior liquidation preference (with a higher concentration of senior liquidation preferences in U.S. down round financings – 64%, and U.S. late stage financings (close to 50% in Series D and beyond financings)).



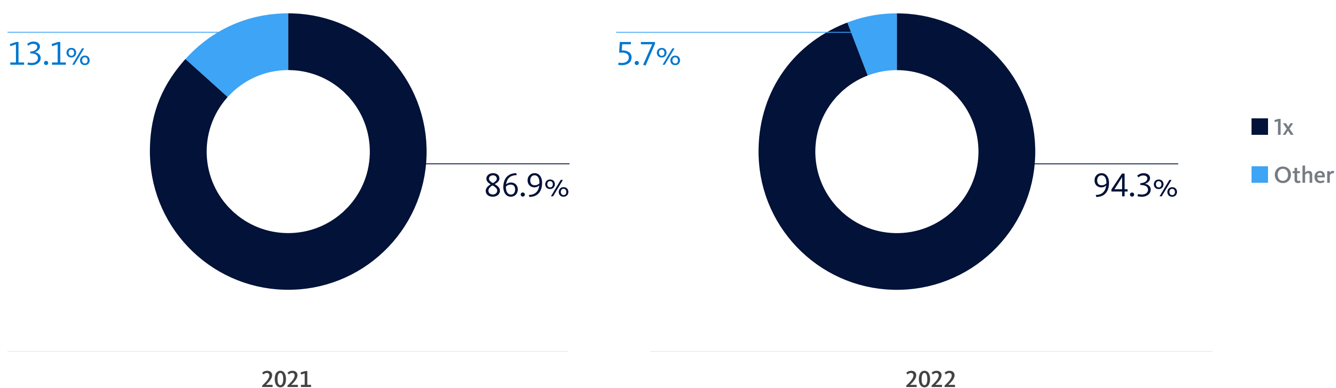
Financings which provide for a multiple on liquidation preferences

For financings included in the *Deal Points Report*, the chart below illustrates the distribution of multiples on liquidation preferences associated with the preferred shares being issued. A senior ranking liquidation preference is the right of a holder of preferred shares to receive at least the original price per preferred share paid by the investor for those preferred shares, or some multiple thereof based on the rights associated with the preferred shares, prior to and in preference to subordinate classes of shares of the company in the context of a sale of the company and a distribution of those sale proceeds to its shareholders.

The right to receive a multiple of the original price per preferred share paid by the holder for its preferred shares is referred to as a multiple on the holder's liquidation preference. For example, a holder may have purchased one preferred share for $1.00, however, that holder may have a right to receive a liquidation preference equal to $1.50 for that one preferred share (or 1.5x the original price paid by the holder for that one preferred share) in preference to subordinate classes of shares of the company. The results below are consistent with our expectations, in that a 1x multiple on liquidation preferences is the standard for financings. This data is consistent with U.S. deal studies for 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022*, where 5%-11% of U.S. financings included a security with a liquidation preference above 1x (provided that all such multiples were below 2x).



As indicated in the charts below regarding the distribution of multiples on liquidation preferences associated with the preferred shares being issued, it is clear that a 1x multiple on liquidation preferences continued to be typical in financing transactions in 2022, despite the changing market environment that year. Surprisingly, the charts also indicate that the usage of a 1x liquidation preference was more prevalent in 2022 than 2021.

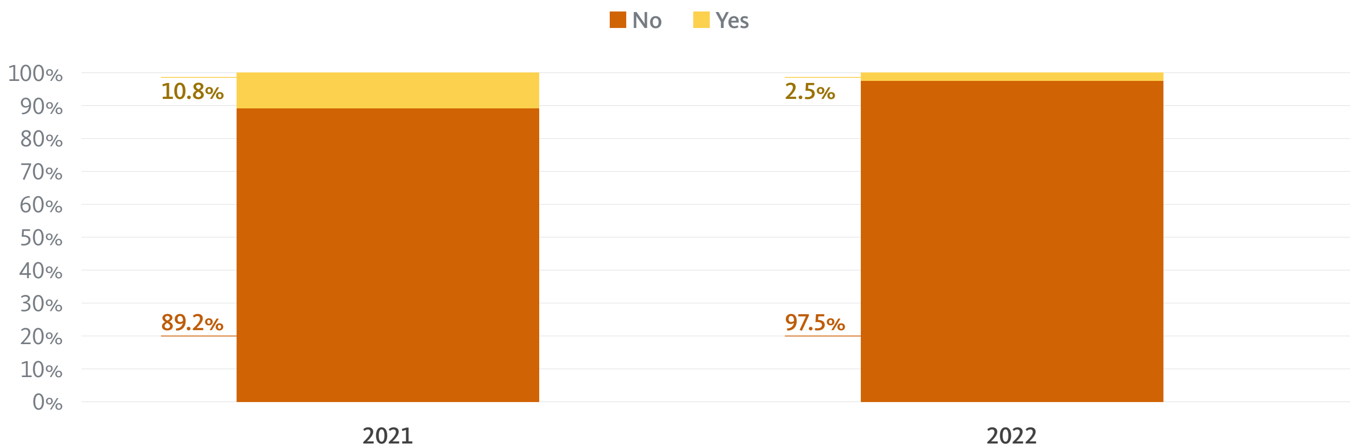


Financings with participating preferred shares

The proportion of financings in the *Deal Points Report* which included participating preferred shares is indicated below. Participating preferred shares are a type of preferred share that, in the context of sale or liquidation of a company, gives investors rights to receive both their liquidation preference (which is generally the original issue price of the applicable preferred share, or some multiple of such amount) as well as, alongside the holders of common shares of the company, the investor's pro rata portion of the remaining value in the company (on an as-converted basis), following the payment of the aforementioned liquidation preference. The results below are consistent with expectations, in that participating preferred shares are generally atypical. The inclusion of a participation feature in the financings covered by the *Deal Points Report* is consistent with the U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, where a participation feature was included in 3% to 9% of U.S. financings.

Yes No

The chart below compares the proportion of financings which included participating preferred shares in 2022 and 2021. It is clear that non-participating preferred shares continued to be typical in financing transactions in 2022, despite the changing market environment that year (as a participation feature is a typical 'investor friendly' term).



Financings with cumulative vs. non-cumulative dividends

The proportion of financings in the *Deal Points Report* which included rights to cumulative and non-cumulative dividends is highlighted below. Cumulative dividends are dividends that accrue at a specified rate on a class or series of shares, regardless of whether or not the company actually declares dividends on those shares and generally carry a right to receive those accrued dividends in priority to one or more other classes or series of shares of the company. Non-cumulative dividends, by contrast, are dividends which do not have any amount accruing to the applicable class or series of shares and are simply paid out if, as and when declared by the board of directors and in such amounts determined by the board of directors. These results are consistent with expectations, in that cumulative dividends are uncommon in financing transactions. The financings covered by the *Deal Points Report* had a higher incidence of cumulative dividends than the financings covered by the U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and

Period of reset is positive development for venture industry

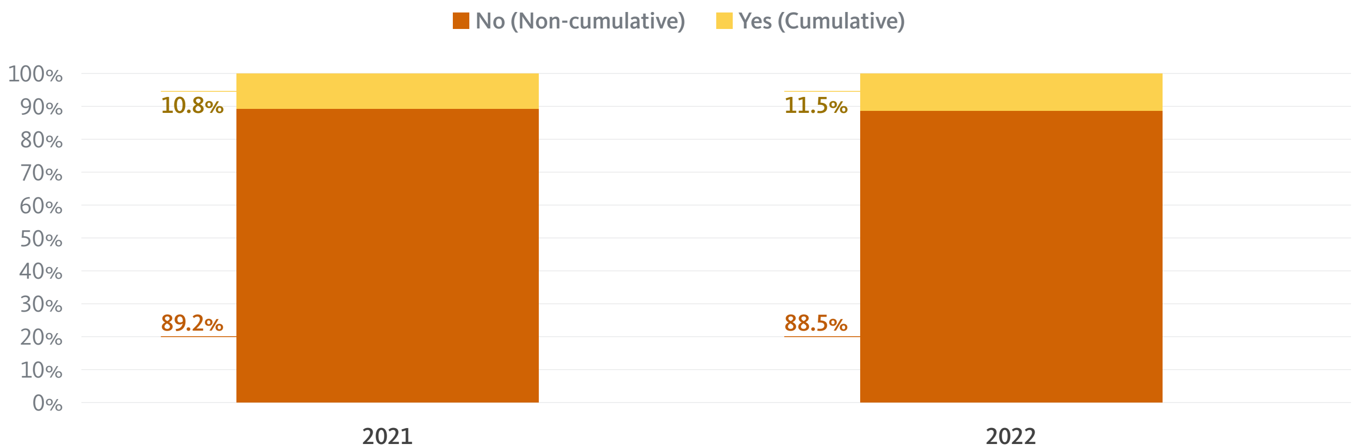
PENDER VENTURES

Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, which only included cumulative dividends in 2% to 8% of U.S. financings (with an increased incidence (8%) in U.S. flat and down round financings).

10.5% Yes (Cumulative)

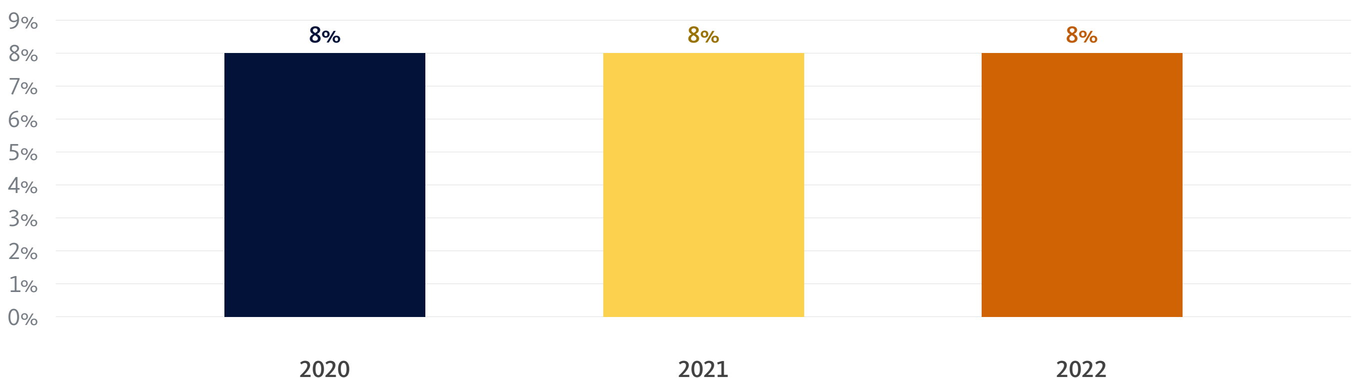
89.5% No (Non-cumulative)

The chart below compares the proportion of those financings which included rights to cumulative and non-cumulative dividends in 2021 and 2022. It is clear that non-cumulative dividends continued to be typical in financing transactions in 2022, despite the changing market environment that year.



Financings with cumulative dividends, mode accrual rate

The chart below shows the most commonly used dividend rate (the mode) for financings in the *Deal Points Report* which included rights to cumulative dividends. The most commonly used dividend rate for those financings was 8%, consistent with the 2021 and 2020 *Deal Points Report* data.



Financings which include rights to anti-dilution protection

The proportion of financings in the *Deal Points Report* which included rights of anti-dilution protection in favour of the investor against future financings at a price below that paid by an investor in the current financing round is illustrated below. Anti-dilution rights are usually included in a company's share terms and are triggered when a company issues new equity at a price per share that is lower than the original issue price paid by the investors in the current financing round. As preferred shares of a venture backed company are almost always convertible into common shares, anti-dilution rights adjust the conversion ratio that determines the number of common shares that each preferred share converts into. When anti-dilution protections are triggered, the conversion ratio is adjusted, with the result that each preferred share held by the investor will be convertible into a larger number of common shares. Importantly, anti-dilution rights do not result in issuing additional preferred shares to the investor at the time of being triggered, nor do they seek to provide any other recourse, beyond what is described above, for an investor as a result of issuances of new shares by the company at a price per share that is less than what the existing investors paid. The results provided in the chart below are consistent with expectations – the presence of price-based anti-dilution provisions are ubiquitous in financings. The data in the *Deal Points Report* is consistent with the U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, which showed that 98% to 100% of the U.S. financings covered by their studies included similar anti-dilution protections.

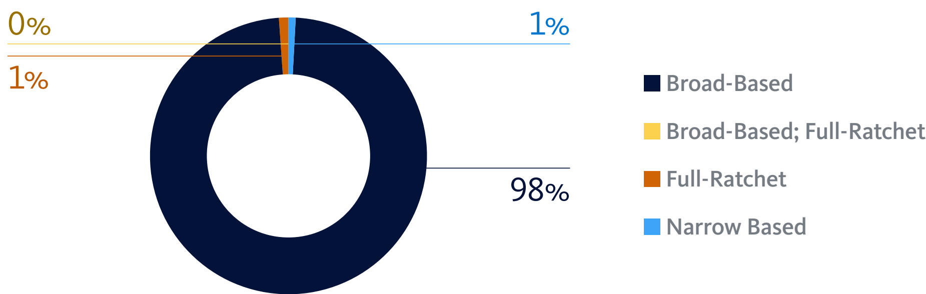
Financings which include rights to anti-dilution protection, types of anti-dilution protection

The figure below illustrates the proportion of financings in the *Deal Points Report* which included these anti-dilution protections in favour of the investor:

- broad-based weighted average anti-dilution
- narrow-based weighted average anti-dilution
- full ratchet anti-dilution
- other (for example, where the share terms of a class of shares of the company provided for both broad-based weighted average anti-dilution rights and full ratchet anti-dilution rights)

Generally speaking, broad-based weighted average anti-dilution rights result in the least amount of adjustment to the conversion ratio of preferred shares to common shares referred to in the preceding chart's description, whereas narrow-based weighted average anti-dilution rights result in a more significant adjustment to this conversion ratio (i.e., it is more favourable to investors than a broad-based weighted average anti-dilution adjustment right).

A full ratchet anti-dilution right results in the most significant adjustment to the conversion ratio of preferred shares to common shares and essentially results in an outcome where the preferred shares held by the investor are convertible into that number of common shares as is equal to the number of preferred shares that would have been acquired by the investor had they been able to purchase those preferred shares at the lower price per share offered by the company in the financing which triggered the full ratchet anti-dilution right. Full-ratchet anti-dilution rights are the least favourable rights to the existing shareholder base of an company, and the founders in particular.

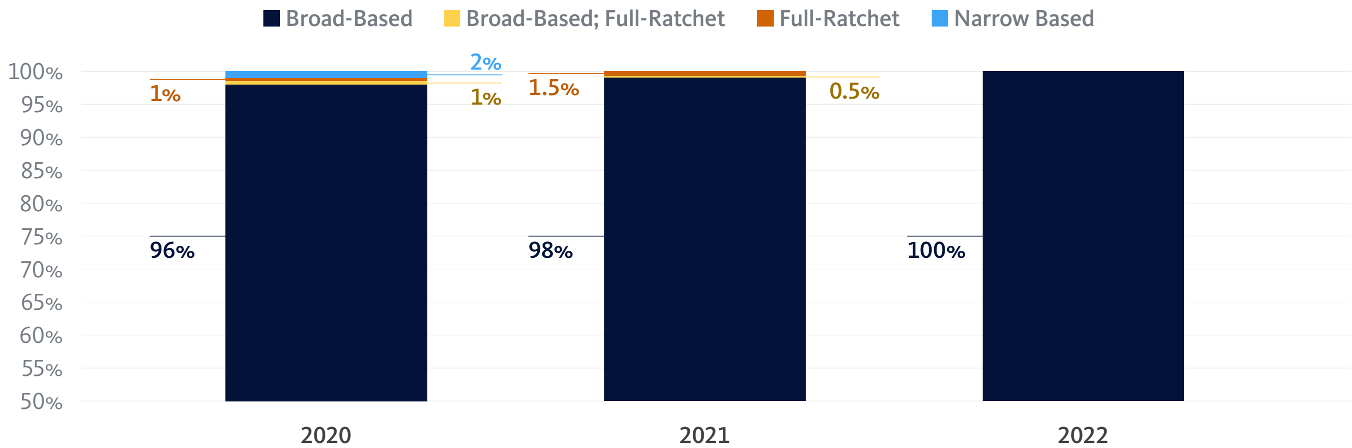


Financings which include rights to anti-dilution protection, types of anti-dilution protection by year

The chart below illustrates the proportion of financings in the *Deal Points Report* which included rights of anti-dilution protection in favour of the investor, broken down by year:

- broad-based weighted average anti-dilution rights
- narrow-based weighted average anti-dilution rights
- full ratchet anti-dilution rights
- other (for example, where the share terms of the company provided for both broad-based weighted average anti-dilution and full ratchet anti-dilution)

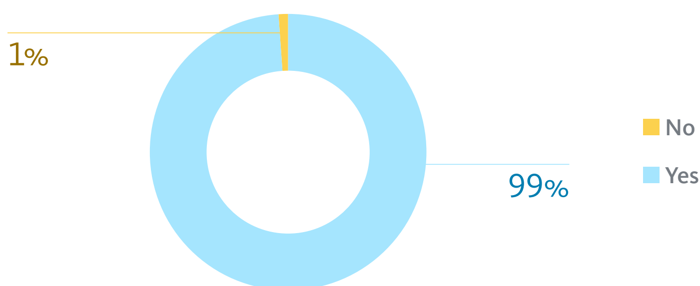
As indicated in the chart below comparing *Deal Points Report* data from 2022 and 2021, it is clear that broad-based weighted average anti-dilution rights continued to be typical in financing transactions in 2022, despite the changing market environment that year.



Financings with automatic conversion rights on an initial public offering

The figure below shows the proportion of financings in the *Deal Points Report* which included provisions for the automatic conversion of outstanding preferred shares into common shares upon the initial public offering of the company. The data presented is consistent with expectations in that almost all financings provide for the automatic conversion of all preferred shares into common shares upon the company's initial public offering. Please note that there are also other common automatic conversion triggering events not included in this release of the *Deal Points Report*, including:

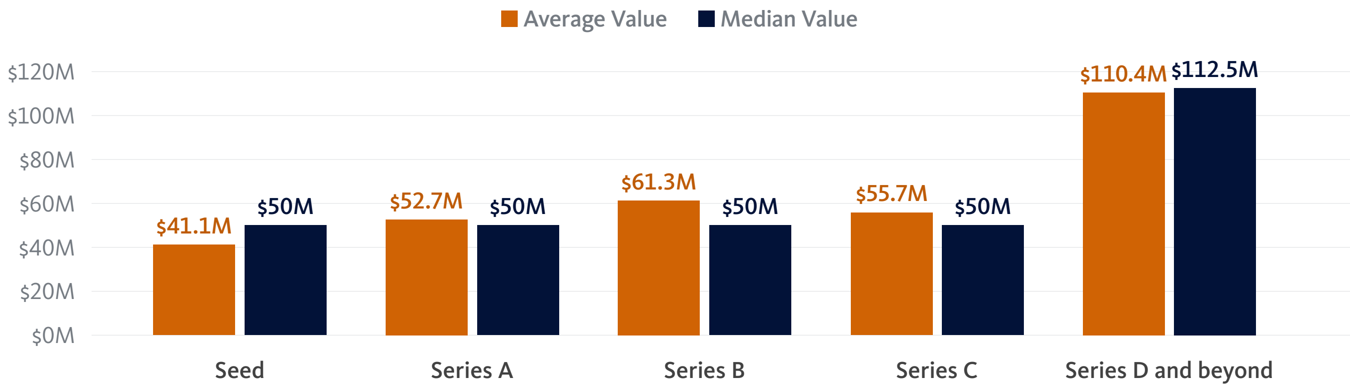
- transactions utilizing special purpose acquisition companies, which is increasingly less common
- direct listings, which is increasingly less common
- preferred shareholder votes, based on some formulation of a "majority" of the preferred shareholders



Financings with automatic conversion rights on an initial public offering, median and average qualified initial public offerings values by series

The chart below illustrates the financings in the *Deal Points Report* which include provisions for the automatic conversion of outstanding preferred shares into common shares upon the initial public offering of a company.

These provisions typically require that the applicable initial public offering raise a minimum amount of gross proceeds to trigger the automatic conversion – typically referred to as a "qualified initial public offering." The chart shows the median and average for gross proceeds in financings that included a qualified initial public offering concept, by series of financing. Please note that articles for financing transactions may also provide that, in addition to meeting a minimum threshold of gross proceeds received, the shares of the company subject to the initial public offering must also be issued at a price that represents a certain multiple of the original issue price of the most recently issued class or series of preferred shares.



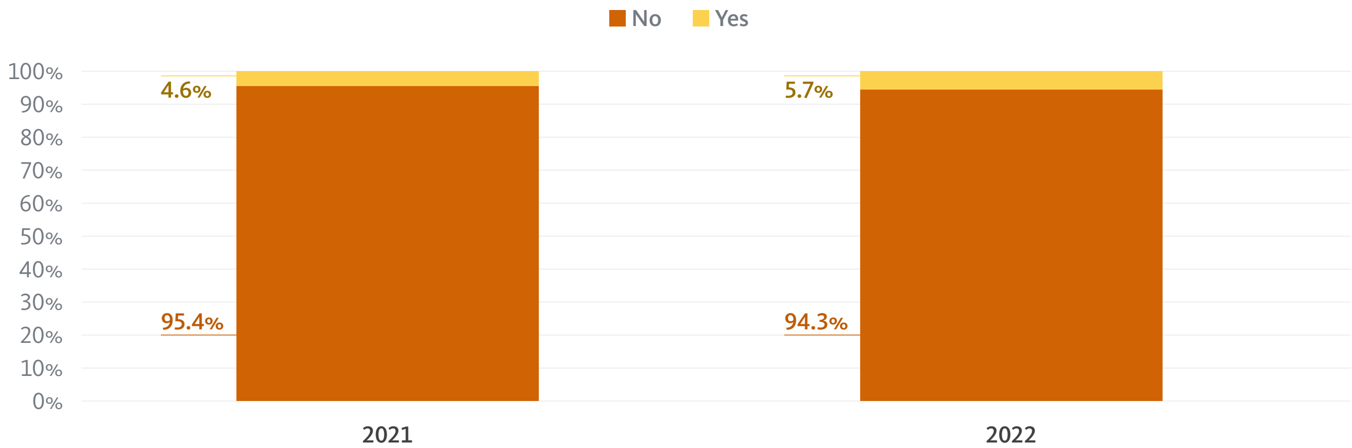
Financings with redemption rights

The proportion of financings in the *Deal Points Report* which included rights of redemption is shown below. Redemption rights are rights associated with preferred shares that entitle the holder of those shares to exercise their right to require the company to purchase, for cancellation, those shares at a pre-defined price. Generally speaking, redemption rights become exercisable following a specific period of time after the holder acquires the applicable preferred shares. This proportion is consistent with expectations, in that redemption rights are generally uncommon in financing transactions. The data in the *Deal Points Report* is consistent with the financings included in the U.S. deal studies in 2022, including Fenwick's *Silicon Valley Venture Capital Survey – Fourth Quarter 2022* and Wilson Sonsini's *The Entrepreneurs Report Private Company Financing Trends*, where between 2% to 12% of such U.S. financings included a redemption right.

6.8%
Yes

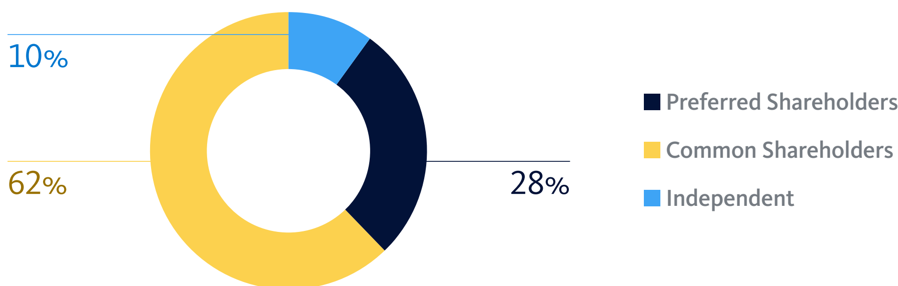
93.2%
No

The chart below compares *Deal Points Report* data regarding the proportion of those financings which included rights of redemption from 2022 and 2021; it is clear that redemption rights continued to be uncommon in 2022, despite the changing market environment that year.



Board representation

For financings included in the *Deal Points Report*, the chart below shows the average breakdown of board composition between common directors, preferred directors and independent directors. The information on a company's board structure is included in its shareholders agreement (for those companies whose shareholders agreements are based on the CVCA / NVCA models, it is included in the voting agreement). The average size of the boards was 4.4 directors. Additionally, 224 of the 353 reviewed financings allocated a board seat to the then current Chief Executive Officer (or President).

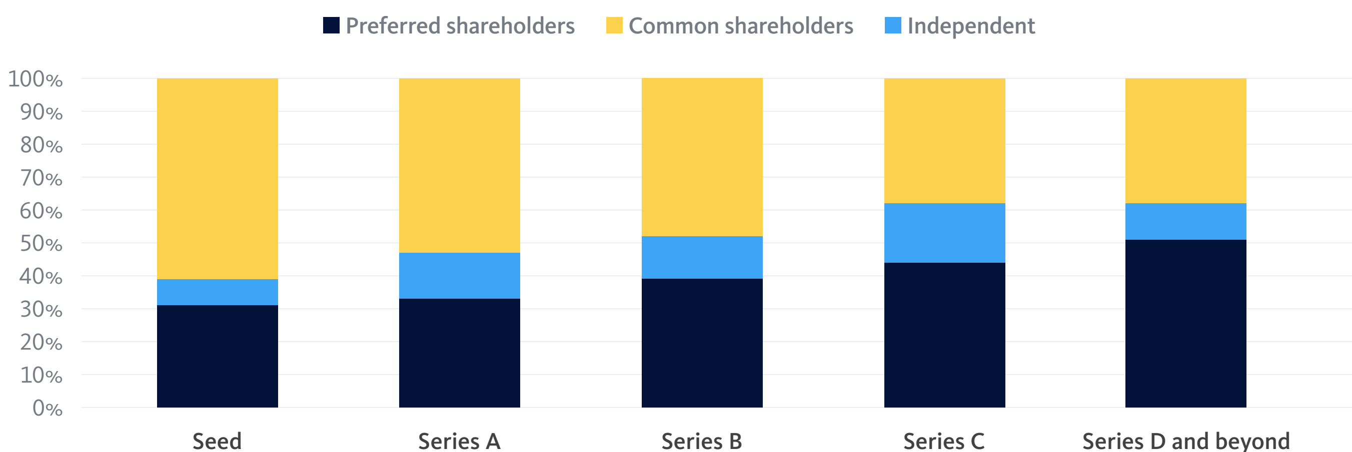


Advice to founders: manage cashflow prudently and find strategies to achieve efficiencies

Board representation, by series

For financings included in the *Deal Points Report*, this is the breakdown of board composition (expressed as a percentage of the overall size of the board of directors), as between common directors, preferred directors and independent directors, by series. These results are consistent with our expectations:

- The proportion of directors nominated by common shareholders, relative to the overall size of the board of directors, gradually decreases, relative to the total size of the board of directors, as the company raises subsequent rounds of financing.
- The proportion of directors nominated by preferred shareholders gradually increases, relative to the overall size of the board of directors, as the company raises subsequent rounds of financing.



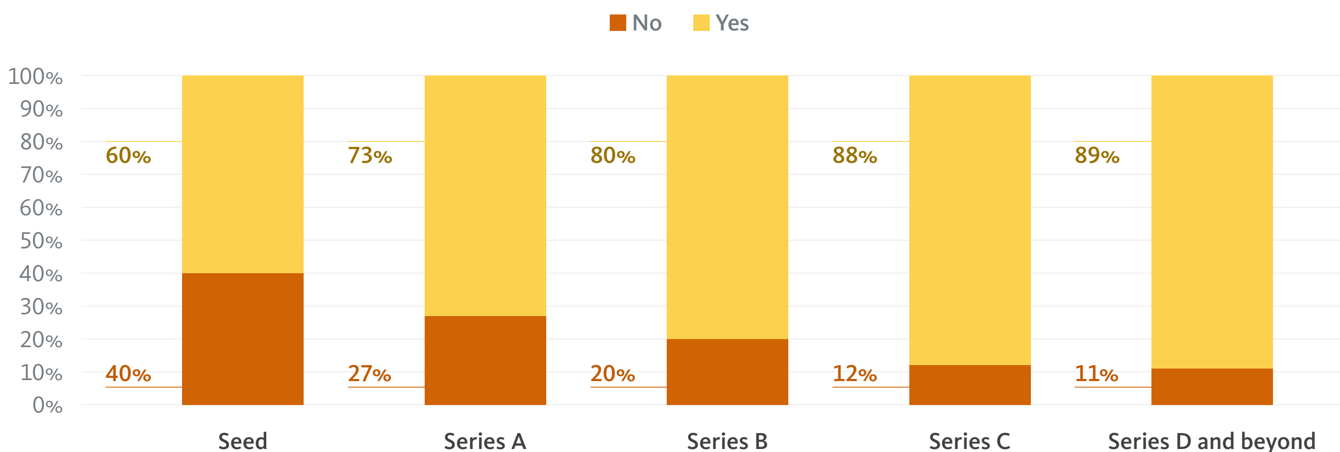
Board observer rights in financings

The figure below represents the proportion of financings in the *Deal Points Report* which included rights of the investors to designate a board observer. The company's grant of observer rights is typically covered in a company's shareholders agreement (for those companies whose shareholders agreements are based on the CVCA / NVCA models, it is included in the investors' rights agreement). A board observer is an individual designee of an investor who is entitled to attend meetings of the board of directors of a company in a non-voting capacity and, subject to certain limitations – such as the overriding need to protect sensitive commercial information and trade secrets or solicitor-client privilege – receive all materials provided to the board of directors by the company. The concept of a board observer is contractual in nature and is not reflective of a particular right in the corporate statutes in Canada. As such, material investors and the company will negotiate certain rights related to board observers in the context of a financing.

Yes No

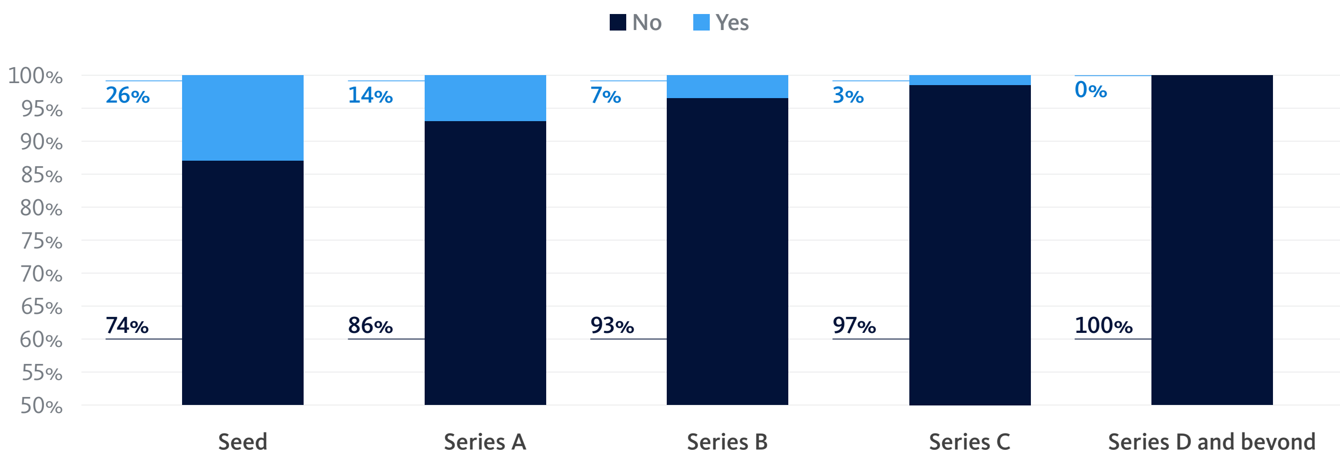
Board observer rights in financings, by series

This chart shows the proportion of financings in the *Deal Points Report* which included rights of the investors to designate a board observer, by series of financing.



Reverse vesting

For financings included in the *Deal Points Report*, the chart below shows the breakdown of instances where founders were requested to reset all or a portion of the reverse vesting schedule applicable to the founders, or put in place a new reverse vesting arrangement if not already in place at the time, by series. It is important to note that the numbers below do not seek to report on whether founders have reverse vesting arrangements in place at the time of a given financing. Our view is that vesting arrangements for founders at the early stages of financing is typical, and that experienced legal counsel in the emerging and high growth companies space will encourage founders to implement reverse vesting schedules. Therefore, the data below is helpful, in that it indicates that the resetting or implementation of new reverse vesting arrangements is concentrated in earlier stages of financings.



Financings with exclusivity provision

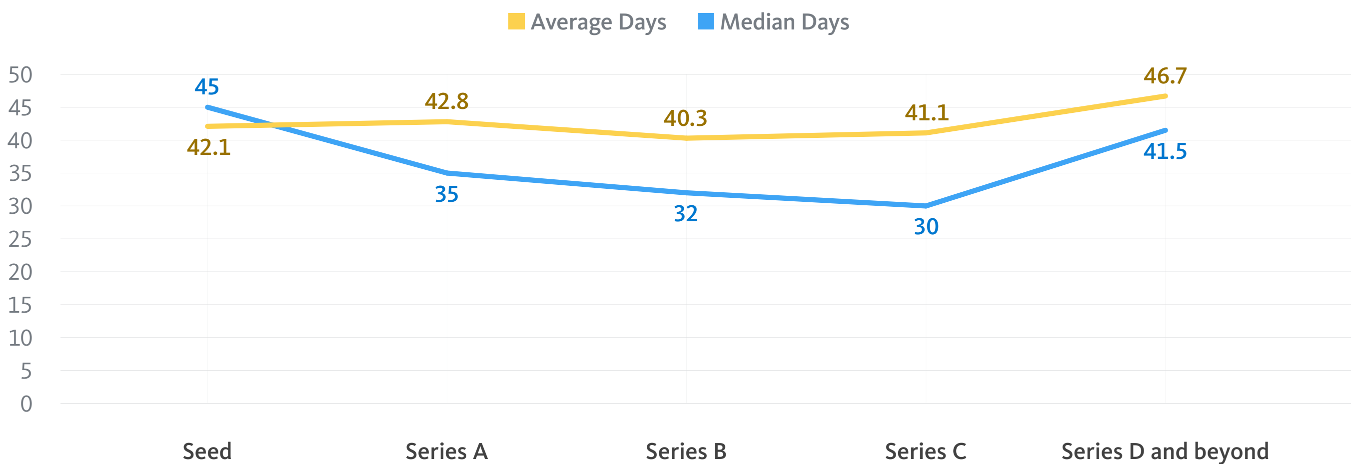
This figure shows the proportion of financings in the *Deal Points Report* which included exclusivity rights in favour of the lead investor(s) at the term sheet stage.

Yes

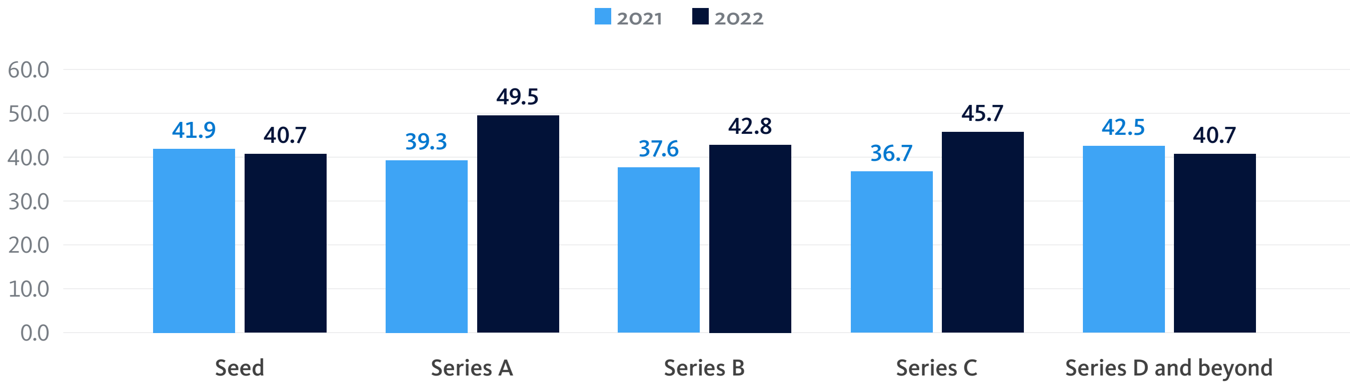
No

Financings with exclusivity provision, average and median duration by series

For financings included in the *Deal Points Report*, this chart illustrates the average and median durations of exclusivity rights in favour of the lead investor(s) at the term sheet stage, by series of financing.



The chart below compares *Deal Points Report* data from 2022 and 2021 regarding the average duration of exclusivity rights in favour of the lead investor(s) at the term sheet stage by series of financing. It is clear that the average duration for exclusivity periods in 2022 remained generally consistent with the 2021 numbers, notwithstanding that the median time between term sheet signing date and financing closing date in 2022 increased (see above).



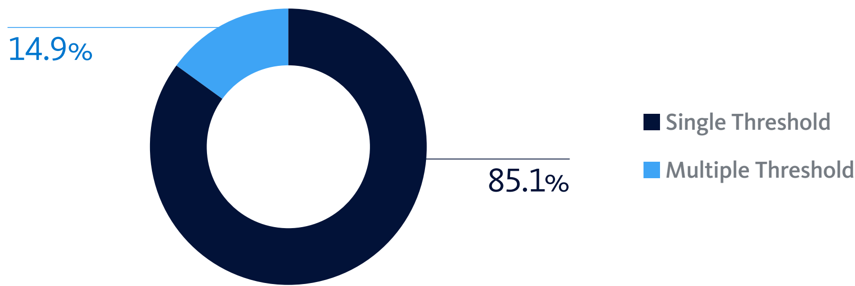
Approval thresholds for preferred shareholders in shareholders agreements, amendments

For financings included in the *Deal Points Report*, the makeup of the "preferred majority" threshold under the Voting Agreement, Right of First Refusal and Co-Sale Agreement and the Investors' Rights Agreement is illustrated below. Specifically, the diagram reflects whether a single threshold was used (e.g., at least 50% of the votes attached to the outstanding preferred shares) or multiple thresholds were used (e.g., at least 50% of the votes attached to the outstanding preferred shares, which must also include at least 50% of the Series C preferred shares). As indicated by the data below, the overwhelming majority of financings in the *Deal Points Report*, across all three agreements, used a single threshold for the purpose of establishing the "preferred majority" definition. The preferred majority concept is used in a number of key provisions, including in regards to approvals of certain shareholder actions, triggering the drag-along right and approving amendments and waivers to certain rights.

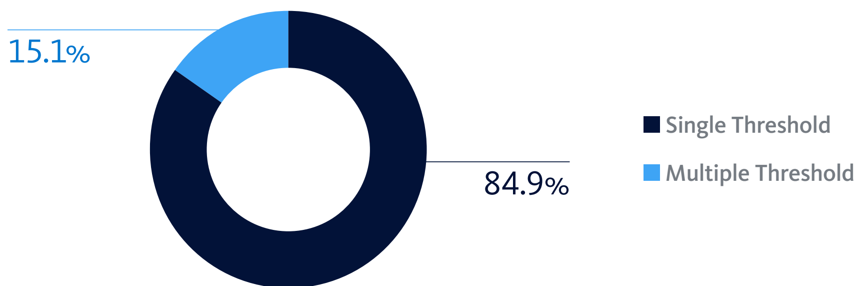
Setting the table for sustainability

Fable

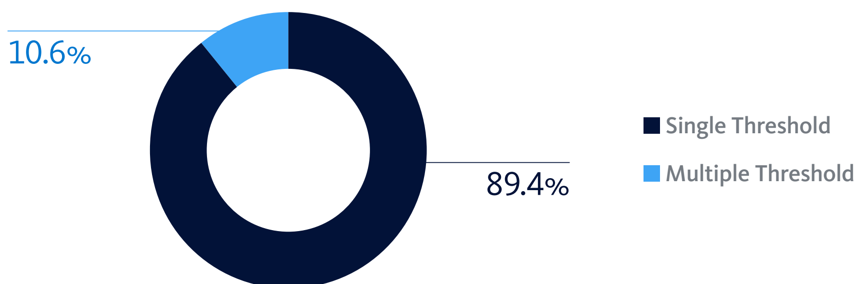
Voting agreements



Investors' rights agreements



Right of first refusal and co-sale agreements



Information rights and inspection rights granted to preferred shareholders

Under the Investors' Rights Agreement, certain preferred shareholders are provided with information rights (e.g., the right to receive annual and quarterly financial information on the company) and inspection rights (i.e., the right to examine the books and records of the company). Based on the data below, the overwhelming majority of the financings included in the *Deal Points Report* allocated such information and inspection rights only to a subset of the preferred shareholders – the "major investors."

The major investors in a financing are typically defined as those preferred shareholders that hold a minimum number of preferred shares or a minimum percentage of the fully-diluted equity of the company (e.g., 5% of fully-diluted equity of the company). It is common practice for a company to actively limit the shareholders it is required to share its competitively sensitive financial information with and to limit that requirement to only its largest investors (who are not competitors).

9.4%
All

90.6%
Specific Preferred Shareholders (e.g. Major Investors)

Pro-rata rights granted to preferred shareholders

Similarly, under the Investors' Rights Agreement, certain shareholders are provided with pro-rata rights (often referred to as pre-emptive rights). Consistent with the data on information rights, where preferred shareholders are provided with these rights, the vast majority of the financings included in the *Deal Points Report* only provide such pro-rata/pre-emptive rights to a subset of the preferred shareholders -- the major investors and major shareholders. As noted above, the major investors in a financing are typically defined as those preferred shareholders that hold a minimum number of preferred shares or a minimum percentage of the fully-diluted equity of the company (e.g., 5% of fully-diluted equity of the company). Pro-rata rights give an investor the right (but not the obligation) to participate in future financing rounds of the company to maintain their existing pro-rata ownership of the company (subject to certain market exceptions). As with information rights, this valuable right is typically reserved for a company's most significant preferred shareholders.

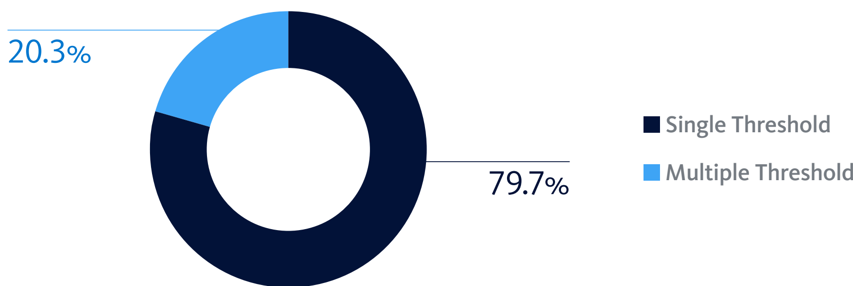
12.8%
All

87.2%
Specific Preferred Shareholders (e.g. Major Investors)

Approval thresholds for preferred shareholders in Voting Agreements, drag-along

Under the standard CVCA model financing agreements, the Voting Agreement includes a drag-along provision, where, if an agreed threshold of shareholders (and the board of directors) approve an exit transaction, then all other shareholders of the company are required to participate in such dragged transaction. Under the standard drag-along provision, the drag-along can be triggered with the approval of an agreed percentage of the preferred shares, a percentage of the common shares and the board. The charts below analyze each of these categories.

With respect to the preferred shares, approximately 80% of the Voting Agreements included in the financings covered by the *Deal Points Report* required the approval of a single threshold of the preferred shareholders (e.g., a majority of the votes attached to the outstanding preferred shares). Only 8.9% of the financings included a threshold that required multiple groups of preferred shareholders (e.g., a majority of the preferred shares, which must include a majority of the Series B preferred shares).



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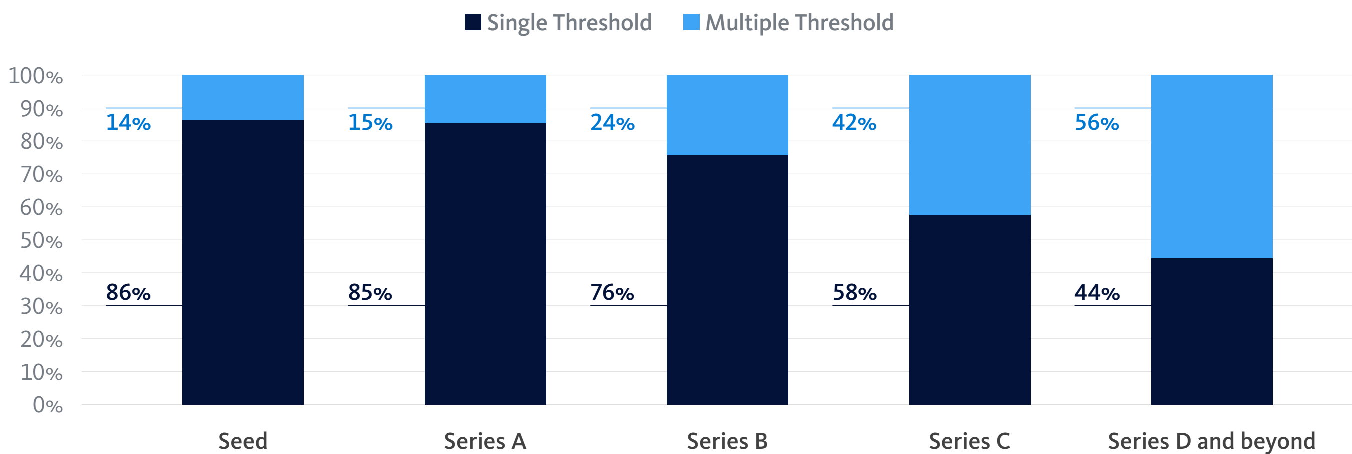
Approval thresholds for preferred shareholders in Voting Agreements, drag-along (by series)

Breaking down the preferred shareholder threshold further, the inclusion of multiple preferred voting thresholds is more common in later stage financings. This is to be expected, particularly if there is a material increase in the company's valuation in connection with a subsequent round (e.g., if the Series C round was at $10 a share, and the Series D round was at $100 a share). In this scenario, the new shareholders (who will represent a minority of the outstanding preferred shares) may seek additional protections on being dragged into an exit transaction, including specific approval rights relating to triggering the drag-along provision.



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We gratefully acknowledge the help of our Osler Works – Transactional (OWT) team and our 2022 summer students: Sandra Sbrocchi, Joshua Murray, Lynnea Maki, Sahar Ayub, Chelsea Bland, Manvir Rai, Ugochukwu Mbakogu, Jacqueline Kang and Sarah McGregor. Their contributions were critical in the completion of this report.

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